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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. June 21, 2011

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on June 14, 2011

AWARDS AND PROCLAMATIONS

Proclamation:

2011 USA National Volleyball Tournament Days

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

II. CONSENT AGENDAS (ITEMS 1 THROUGH 18)

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

1. Appeal of April 21, 2011 Revocation of the Portable Amusement Ride License for Moonwalks for Fun, Inc. (Deferred June 7, 2011)

RECOMMENDED ACTION: Based on evidence presented, reverse, affirm (wholly or partly) or modify the decision of City of Wichita staff to revoke the portable amusement ride license of Moonwalks for Fun, Inc.

IV. NEW COUNCIL BUSINESS

1. Petition to renovate building facade at 1525 East Douglas. (District I)

RECOMMENDED ACTION: Approve the petition, adopt the resolution and authorize the necessary signatures.

2. 2011-2012 Special Liquor Tax Request for Proposals Request for Proposals (RFPs).

RECOMMENDED ACTION: Approve the Special Liquor Tax Coalition 2011-2012 funding allocations, authorize provider contracts developed for those allocations, and authorize the necessary signatures.

3. Amendments to Motor Vehicle Safety Belt Use Ordinance, Section 11.38.285.

RECOMMENDED ACTION: Declare a public emergency and adopt the ordinance making the recommended amendments to City of Wichita Code Section No. 11.38.285.

4. Ordinance amendments relating to Driving Under the Influence, Sections 11.38.150, 11.38.155 and 11.38.157 of the Code of the City of Wichita.

RECOMMENDED ACTION: Declare a public emergency and adopt the Ordinances making the recommended amendments to Sections 11.38.150, 11.38.155 and 11.38.157 of the Code of the city of Wichita.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

1. Air Capital Terminal 3 (ACT 3) Program and Parking Facilities Program - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Authorize moving forward with the programs and approve the program budgets.

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

None

IX. COUNCIL MEMBER APPOINTMENTS

1. **Board Appointments.**

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 18)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2011</u>	<u>(Consumption off premises)</u>
Bob Palmer	On Cue Express #600	433 South Greenwich Road
Darron Aldridge^Dillons #272***	10304 West 13th	

<u>Renewal</u>	<u>2011</u>	<u>(Consumption on premises)</u>
Mary Gerges	Shesha Coffee Shop, LLC*	2628 East 21st Street North

*General/Restaurant 50% or more gross revenue from sale of food.

***Retailer grocery stores, convenience stores, etc.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Petition for a Storm Water Drain in Stonebridge 2nd and 3rd Additions, north of 13th, east of 143rd Street East. (District II)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Consideration of Street Closures/Uses.

- a. Community Events: Bradley Fair Summer Concert Series. (District II)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

6. Design Services Agreement:

- a. Design Supplemental Agreement No. 2-I235 Freeway at 13th Street Flyover. (Districts V and VI)
- b. Agreement for Design Services for Paving, Water, Storm Water Drain, and Sanitary Sewer Improvements in Reeds Cove Medical Campus Addition, east of 127th St. East, south of 21st. (District II)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Change Orders:

- a. Change Order No. 2- Harry and Rock Intersection Improvement. (District II)

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

8. Property Acquisition:

- a. Partial Acquisition of 3217 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
- b. Partial Acquisition of 3150 South Seneca for the Seneca, 31st Street South to Interstate 235 Road Improvement Project. (District IV)
- c. Acquisition of a portion of 1357 North Minneapolis for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

9. Minutes of Advisory Boards/Commissions

Airport Advisory Board, May 2, 2011

Board of Code Standards and Appeals, May 2, 2011

RECOMMENDED ACTION: Receive and file.

10. Repealing and Replacing EDX Ordinance, Cox Machine. (District V)

RECOMMENDED ACTION: Adopt the amending ordinance and authorize the necessary signatures.

11. Amendment to Kansas Humane Society Lease Agreement.

RECOMMENDED ACTION: Approve the Amendment to the Lease Agreement between the City of Wichita and the Kansas Humane Society.

12. Weapons Destruction.

RECOMMENDED ACTION: Receive and file the list of weapons.

13. 2011 Bulletproof Vest Partnership Grant.

RECOMMENDED ACTION: Approve the grant application and authorize the necessary signatures.

14. Major Bus Engine Replacement.

RECOMMENDED ACTION: Approve the new engine replacement purchase from Central Power Systems and Services with a cost of \$39,081 as identified in option 2 above.

15. Notice of Intent to Use Debt Financing - Radar Relocation Study - Mid-Continent Airport.

RECOMMENDED ACTION: Adopt the Resolution and authorize the necessary signatures.

16. Second Reading Ordinances: (First Read June 14, 2011)

- a. List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

17. *VAC2011-00014 - Request to vacate a portion of platted street right-of-way; generally located on the northeast corner of Kellogg Street and Armour Drive. (District II)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

18. *Veterans Affairs Supportive Housing Grant Application.

RECOMMENDED ACTION: Authorize submission of an application for 25 Housing Choice Vouchers for rental assistance for homeless veterans, and authorize the necessary signatures.

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

None

City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council Members

SUBJECT: Appeal of April 21, 2011 Revocation of the Portable Amusement Ride License for Moonwalks for Fun, Inc.

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendation: Based on evidence presented, reverse, affirm (wholly or partly) or modify the revocation by the Superintendent of Central Inspection of the portable amusement ride license for Moonwalks for Fun, Inc.

Background: The appeal of the portable amusement ride license revocation for Moonwalks for Fun, Inc. was initially scheduled for the June 7, 2011 City Council meeting, but was deferred until June 21, 2011 at the request of City staff. The license revocation by the Superintendent of Central Inspection is stayed pending the outcome of the City Council appeal hearing.

Chapter 3.20 of the City Code sets forth licensing, inspection and insurance requirements for amusement parks and amusement ride businesses. The ordinance was last amended in August 2010 to enhance amusement park and amusement ride licensing, safety, operation, operator training, operator and/or patron accountability and ride inspection/certification requirements. Ordinance amendments relating to reasons for denial of a license and revocation or suspension of a license were also approved in August 2010. Portable amusement ride licenses are renewed annually.

On April 21, 2011, after consulting with the Law Department, the Superintendent of Central Inspection revoked the portable amusement ride license of Moonwalks for Fun, Inc., effective April 29, 2011. The revocation was based on inadequate insurance coverage as required by the ordinance (per certificate of insurance provided with the May 1, 2011 through April 30, 2012 annual license renewal application) and for failure of the licensee to maintain commercial general liability coverage during the annual license period (May 1, 2010 through April 30, 2011). The annual license renewal application for the period May 1, 2011 through April 30, 2012 was denied on April 21, 2011 by the Law Department, per letter from the License Express Office, for failure by the applicant to provide proof of required commercial general liability coverage and for operating Moonwalks for Fun, Inc. within the past two (2) years without required commercial general liability coverage.

On April 27, 2011, a written appeal of the Moonwalks for Fun, Inc. portable amusement license revocation was filed with the City Clerk pursuant to Section 3.20.090 of the Code of the City of Wichita. The appeal was filed by Duane Zogleman, applicant for the Moonwalks for Fun, Inc. portable amusement ride license.

On April 28, 2011, Duane Zogleman provided a revised certificate of general liability insurance for Moonwalks for Fun, Inc. for the period March 23, 2011 through March 23, 2012. The revised insurance certificate showed proper coverage. At the direction of the Law Department, the portable amusement ride annual license renewal for Moonwalks for Fun, Inc., for the period May 1, 2011 through April 30, 2012, was issued. However, the April 21, 2011 license revocation, effective April 29, 2011, was still implemented due to the apparent gap in commercial insurance liability coverage for the period between November 3, 2010 (the effective date of CSI Insurance Agency's cancellation of its policy for Moonwalks for Fun, Inc.) and March 23, 2011 (the effective date of the new insurance coverage provided to Moonwalks for Fun, Inc. by Prime Insurance Company).

The City Council appeal hearing was initially scheduled for May 17, 2011, but was postponed until June 7, 2011 to allow Mr. Zogleman additional time to retain legal counsel. On June 7, 2011, just prior to the scheduled City Council appeal hearing, Mr. Duane Zogleman provided new information to City staff, indicating Moonwalks for Fun, Inc. leased rides from another City-licensed portable amusement ride company between November 3, 2010 and March 23, 2011, the period for which Moonwalks for Fun, Inc. did not have insurance coverage. The company from which Mr. Zogleman says he leased rides between November 3, 2010 and March 23, 2011 was A Jumping Jungle, operated by Stephanie Y. Meyer. On June 7, 2011, City staff informed Duane Zogleman that additional documentation to support the lease of rides by Moonwalks for Fun, Inc. from A Jumping Jungle between November 3, 2010 and March 23, 2011 was required (for any events or rides operated or provided by Moonwalks for Fun, Inc.).

A Jumping Jungle was licensed by the City for the period May 1, 2010 through April 30, 2011 for eight (8) portable/inflatable amusement rides. A Jumping Jungle did not renew its portable amusement ride license (May 1, 2011 through April 30, 2012).

As of June 13, 2011, Mr. Zogleman had not provided additional documentation to the City to verify: (1) that Moonwalks for Fun, Inc. leased rides from A Jumping Jungle between November 3, 2010 and March 23, 2011; and (2) that Moonwalks for Fun, Inc. only utilized inspected and licensed rides leased from A Jumping Jungle during this period. However, information provided to staff on June 13, 2011 by Jesse Zogleman (son of Duane Zogleman) while staff was visiting the business location documents that on at least one (1) occasion, Moonwalks for Fun, Inc. rented a Moonwalks for Fun, Inc. ride for a church event when Moonwalks for Fun, Inc. did not have insurance coverage.

Analysis: On April 6, 2011, Duane Zogleman, Moonwalks for Fun, Inc., submitted an application for renewal of the required annual portable amusement ride license (the prior annual license had an April 30, 2011 expiration date). During staff review of the renewal application, it was discovered that the certificate of commercial general liability insurance for Moonwalks for Fun, Inc. did not meet minimum requirements, showing coverage of \$250,000 per accident (or occurrence) rather than the minimum \$1,000,000 per occurrence coverage required by the ordinance. The insurance certificate included with the renewal application showed coverage for the period March 23, 2011 through March 23, 2012, and was from a new insurance provider (Prime Insurance Company). The prior year license insurance certificate (dated July 23, 2010) showed adequate insurance coverage for Moonwalks for Fun, Inc. from CSI Insurance Agency, for the period July 17, 2010 through July 17, 2011. The revised insurance certificate from CSI Insurance Agency was provided to the City just prior to the end of a ninety day suspension of the Moonwalks for Fun, Inc. portable amusement ride license, approved by Council on May 18, 2010.

Given the change in insurance providers and the overlapping coverage periods between the previous insurer (July 17, 2010 through July 17, 2011) and the new insurer (March 23, 2011 through March 23, 2012), staff was concerned that the previous insurance provider, CSI Insurance Agency, may have cancelled its policy for Moonwalks for Fun, Inc. On April 20, 2011, City staff contacted CSI Insurance Agency by phone. The CSI Insurance Agency representative stated that its July 17, 2010 through July 17, 2011 insurance policy for Moonwalks for Fun, Inc. had been cancelled, effective November 3, 2010 (written verification of the policy cancellation was subsequently received by the City from CSI Insurance Agency on May 2, 2011).

Staff contacted Duane Zogleman several times since April 21, 2011 regarding insurance coverage, or lack thereof, for Moonwalks for Fun, Inc. On May 2, 2011, staff contacted Duane Zogleman by phone. During the May 2, 2011 phone conversation, Mr. Zogleman indicated he had never received or seen the Moonwalks for Fun, Inc. insurance cancellation notice from CSI Insurance Agency; staff subsequently faxed a copy of the written insurance cancellation notice to Mr. Zogleman on May 2, 2011 (staff received a copy of the cancellation form CSI Insurance Agency on May 1, 2011). On May 10, 2011, staff again contacted Duane Zogleman by phone to confirm the scheduled City Council appeal hearing, and to re-iterate the reason for the license revocation - the apparent gap in required insurance coverage between November 3, 2010 and March 23, 2011. During the May 10, 2011 phone conversation, Mr. Zogleman indicated he was still gathering documentation to show that Moonwalks for Fun, Inc. had required

insurance coverage between November 3, 2010 and March 23, 2011. On May 26, 2011, staff contacted Duane Zogleman to confirm the date of the scheduled City Council appeal hearing, and to again request documentation regarding required insurance coverage for Moonwalks for Fun, Inc. between November 3, 2010 and March 23, 2011. During the May 26, 2011 phone conversation, Mr. Zogleman stated he would have the documentation soon, and indicated that Moonwalks for Fun, Inc. had insurance coverage as part of a “piggy-back” to another insurance policy during this period. At approximately 8:20 a.m. on June 7, 2011, Duane Zogleman provided new information to City staff, indicating that Moonwalks for Fun, Inc. had only operated or provided portable and/or inflatable amusement rides during the period November 3, 2010 to March 23, 2011 that were leased from A Jumping Jungle.

Since June 7, 2011, staff (OCI, Law and WPD) have conducted additional research and investigation regarding the claim by Mr. Zogleman that Moonwalks for Fun, Inc. utilized only licensed and inspected portable and/or inflatable rides leased from A Jumping Jungle during the period of November 3, 2010 to March 23, 2011. On June 8, 2011, OCI and WPD staff began contacting the operators of A Jumping Jungle to arrange for an interview. Although phone contact was made with the husband of the licensee for A Jumping Jungle, no interview had yet been conducted or arranged with the licensee for A Jumping Jungle, Stephanie Y. Meyer, as of June 13, 2011. Since June 9, 2011, OCI and WPD staff have also attempted to contact Duane Zogleman, and have visited the Moonwalks for Fun, Inc. business location. As mentioned previously, information provided to staff on June 13, 2011 by Jesse Zogleman shows that Moonwalks for Fun, Inc. did rent one (1) of its rides to a church for an event that occurred when Moonwalks for Fun, Inc. did not have insurance coverage. As of June 13, 2011, staff had not been able to conduct or arrange for a meeting or interview with Duane Zogleman.

Financial Considerations: There are no extraordinary City costs associated with this action and appeal.

Goal Impact: This item impacts the Provide a Safe and Secure Community goal indicator by better ensuring amusement park and amusement ride safety, which includes maintenance of adequate commercial general liability insurance by licensees.

Legal Considerations: Pursuant to Chapter 3.20.090 of the Code of the City of Wichita, the Superintendent of Central Inspection has the authority to revoke a portable amusement ride license application when the applicant becomes ineligible for a license (no insurance or inadequate insurance) or violates any provision of Chapter 3.20 (not maintaining commercial general liability insurance coverage pursuant to Section 3.20.040). The appellant, Duane Zogleman, has been properly notified of the date and time of the City Council appeal hearing.

Recommendation/Action: Based on evidence presented, reverse, affirm (wholly or partly) or modify the decision of City of Wichita staff to revoke the portable amusement ride license of Moonwalks for Fun, Inc.

Attachments: (1) Copy of April 21, 2011 license revocation letter from Superintendent of Central Inspection; (2) copy of April 27, 2011 appeal from Duane Zogleman; (3) copy of May 17, 2011 letter to Duane Zogleman regarding June 7, 2011 Council appeal hearing; (4) copy of Certificate of Liability Insurance from CSI Insurance Agency for period July 17, 2010 through July 17, 2011; (5) copy of Notice of Cancellation of Insurance from CSI Insurance Agency dated September 28, 2010; (6) copy of Certificate of Insurance from Prime Insurance Company, submitted with April 6, 2011 license renewal application, for period March 23, 2011 through March 23, 2012; (7) copy of revised Certificate of Insurance from Prime Insurance Company dated 4/27/11, for period March 23, 2011 through March 23, 2012; (8) copy of contract between Moonwalks for Fun, Inc. and Riverlawn Christian Church for use of a Moonwalks for Fun, Inc. inflatable ride.

Attachment 1

Copy of April 21, 2011 license revocation letter

Attachment 1

Copy of April 21, 2011 license revocation letter

Attachment 1

Copy of April 21, 2011 license revocation letter



April 21, 2011

Duane L. Zogleman
1721 Amarado Court
Wichita, Kansas 67212

RE: Revocation of Portable Amusement Ride
License #19683, City of Wichita

Dear Sir:

This letter is to notify Duane L. Zogleman that your Portable Amusement Ride License #19683, issued through the City of Wichita for a business known as Moonwalks For Fun, Inc. has been ordered revoked pursuant to Section 3.20.090(a) of the City Code, which requires five (5) days written notice of said revocation. Specifically, you are in violation of that code section for the following reasons:

- **Section 3.20.090(a)(3):** You have become ineligible for a license for portable amusement rides under Chapter 3.20 of the City Code because you do not have commercial general liability insurance coverage for your business in an amount required by Section 3.20.040 thereof, specifically, coverage of not less than \$1 million per occurrence.
- **Section 3.20.090(a)(2)** You have violated a provision of Chapter 3.20 of the City Code, specifically Section 3.20.040, by not maintaining commercial general liability insurance coverage for your business as required by Section 3.20.040 thereof.

This letter is further intended to provide notification to you as the licensee of Moonwalks For Fun, Inc. that your Portable Amusement Ride License #19683, will be considered revoked as of Friday, April 29, 2011, and the continued operation of your business after midnight on April 28, 2011 will be considered in violation of Sections 3.20.020 and 3.20.080 of the City Code. These violations are misdemeanors punishable by prosecution in the municipal court of the City of Wichita and can result in a fine not to exceed \$1000 and/or by imprisonment for not more than one year. In addition, the City of Wichita may seek additional court ordered remedies against the continued operation of your business including, but not limited to injunctive relief in the District Court of Sedgwick County, Kansas.

Office of Central Inspection

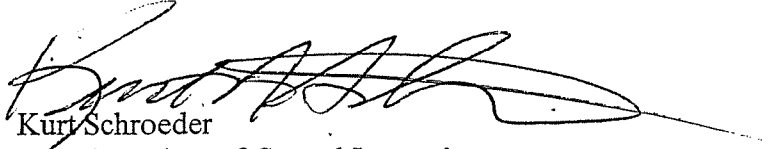
City Hall • 7th Floor • 455 N. Main • Wichita, Kansas 67202-1600

T 316.268.4460 F 316.268.4663

www.wichita.gov

As a licensee, you have the right to appeal this order of revocation in writing to the City Council within seven (7) days from the date of this letter. Complete appeal rights of a licensee under Chapter 3.20 of the City Code are set forth in Section 3.20.095 thereof.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kurt Schroeder', with a long horizontal flourish extending to the right.

Kurt Schroeder
Superintendent of Central Inspection
City of Wichita, Kansas

Cc: Norman Williams, Chief of Police

KS/EH

Attachment 2

Copy of April 27, 2011 appeal from Duane Zogelman

RECEIVED

City Clerk
455 N. Main
Wichita, Kansas

APR 27 '11

April 27, 2011

CITY CLERK OFFICE

Notice to appeal revocation of portable Amusement Ride
License 19683.

Issued to Duane L Zogelman
1721 Amarado Court
Wichita, KS 67212

The date of the letter advising me of the insurance
coverage required was April 21, 2011

I was advised the insurance carrier was not registered
in Kansas but was advised they were and documentation
attached.

I was advised the policy was to read \$1,000,000⁰⁰ per
accident and it now does as per attached documentation.

With this in mind I request the revocation of
this license be lifted.

Thank You for your consideration of this request
and I look forward to hearing from you.

Duane L Zogelman

Attachment 3

**Copy of May 17, 2011 letter to Duane Zogelman regarding
June 7, 2011 Council appeal hearing**



Sent Regular and Certified Mail

May 17, 2011

Duane L. Zogleman
Moonwalks for Fun, Inc.
1721 Amarado Court
Wichita, Kansas 67212

**RE: Wichita City Council Appeal Hearing:
Portable Amusement Ride License Revocation for Moonwalks for Fun, Inc. -
License #19683**

Dear Mr. Zogleman:

This is a follow-up to our recent telephone conversation regarding the City Council hearing date for the above referenced appeal. On May 10, 2011, you requested that the suggested City Council hearing date of May 17, 2011 be postponed to allow you more time to retain legal counsel for the hearing.

Per your request, the appeal hearing will be scheduled as a "New Business" item during the June 7, 2011 City Council meeting. The City Council meeting will begin at 9:00 a.m., and will be conducted in the City Council Chambers on the first floor of City Hall, 455 N. Main Street. A final June 7, 2011 City Council Agenda should be available by Friday, June 3, 2011, as should the City Council Agenda Item.

Please contact me at 268-4460 or at kschroeder@wichita.gov should you have any questions or need information about the revocation and/or appeal hearing.

Sincerely,

Kurt A. Schroeder
Superintendent of Central
Inspection

CC: Karen Sublett

Office of Central Inspection

City Hall • 7th Floor • 455 N. Main • Wichita, Kansas 67202-1600

T 316.268.4460 F 316.268.4663

www.wichita.gov

Attachment 4

**Copy of certificate of liability insurance from
CSI Insurance Agency for period 7/17/10 through 7/17/11**

19683

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE
07/23/10

PRODUCER
CSI Insurance Agency
318 Maxwell Road Suite 100
Alpharetta, GA 30009
Voice: 678-832-4900 Fax: 678-832-4910 - HFG@CSIProtection.com

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Mocanwalks For Fun, Inc
PO Box 9244
Wichita, KS 67277-0244
Phone: 316-440-4740

INSURER A: Interstate Fire & Casualty Insurance Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY				
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	IFP1003421	07/17/10	07/17/11	FIRE DAMAGE (Any one fire) \$ 100,000
					NEO EXP (Any one person) \$ 1,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO <input type="checkbox"/> JECT <input type="checkbox"/> LOC				GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/PROP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY				
	<input type="checkbox"/> ANY AUTO				COMBINED SINGLE LIMIT (Each accident) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> NONOWNED AUTOS				
	GARAGE LIABILITY				
	<input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN AUTO ONLY - EA ACC \$
	EXCESS LIABILITY				
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE \$
	<input type="checkbox"/> DEDUCTIBLE				AGGREGATE \$
	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY				
					WORKERS COMPENSATION (Per employee) \$
					EL EACH ACCIDENT \$
					EL DISEASE - EA EMPLOYEE \$
					EL DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS:

Business Liability Insurance for Inflatable Rental Operations
Certificate Holder is Additional Insured as Required by Written Agreement

CERTIFICATE HOLDER

☒ ADDITIONAL INSURED: INSURER LETTER: A

CANCELLATION

PURE ENTERTAINMENT
DUANE ZOGLERMAN
8545 WIRVING
WICHITA, KS 67209

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

Voice: 316-440-4740

AUTHORIZED REPRESENTATIVE

[Signature]

ACORD 28-S (7/97)
INS-INS025S (02/01/01)

ELECTRONIC LASER FORMS, INC. - (800) 327-0625

© ACORD CORPORATION 1988

Page 1 of 2

Attachment 5

**Copy of Notice of Cancellation of insurance from
CSI Insurance Agency, dated 9/28/10**

INTERSTATE FIRE AND CASUALTY COMPANY
ONE PROGRESS POINT PARKWAY
O FALLON MO 63368

NOTICE OF CANCELLATION OF INSURANCE

Named Insured & Mailing Address:

MOONWALKS FOR FUN, INC
8545 W. IRVING
WICHITA KS 67209

Producer: 00043010

CSI INSURANCE, INC.
316 MAXWELL RD., SUITE 100
ALPHARETTA, GA 30009

Policy No.: JFP1003421
Type of Policy: GENERAL LIABILITY OCCURRENCE
Date of Cancellation: 11/03/2010; 12:01 A.M. Local Time at the mailing address of the Named Insured.

We are cancelling this policy. Your insurance will cease on the Date of Cancellation shown above.

The reason for cancellation is: Additional unfavorable information became available after policy issued.

We must tell you that your policy will be canceled on the effective date shown above. Any claim originating prior to this date will not be affected by this cancellation. If you have not discussed your continued insurance protection with your agent or broker, please contact him/her about other insurance plans. Any unearned premium due you will be refunded if it does not accompany this notice. We are sorry that protection cannot be continued.

Named Insured

MOONWALKS FOR FUN, INC
8545 W. IRVING
WICHITA KS 67209

Date Mailed:
28th day of September, 2010


AUTHORIZED REPRESENTATIVE

FORM# CC8897KS51995
ODEN 3.0.10.08a

Copy for Named Insured

KSCC15NONE APP
09282010YYY
Page 1 of 1



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHANGE ENDORSEMENT

Policy Is Cancelled effective 11/3/2010

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

The premium for this endorsement is included in the premium shown on the declarations unless a specific amount is shown here:

RP

Premium: \$ 8522.06

ENDORSEMENT NO.: 6

Effective: 11/3/2010

Is attached to and forms part of your evidence of Insurance no.: IFP1003421

Issued by: Interstate Fire & Casualty Insurance
Executive Offices: 33 W. Monroe Street
Chicago, Illinois 60603

Insured: Moonwalks For Fun, Inc

Date Issued: 10/11/10

Authorized Representative:

MSE-8001 (11/91) (Ed. 08/05)

Attachment 6

**Copy of Certificate of Insurance from Prime Insurance Co.,
Submitted with 4/6/11 license renewal application,
For period 3/23/11 through 3/23/12**

7

CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)
03/24/2011

PRODUCER AND THE NAMED INSURED
I.E.B.S.

8722 S. Harrison St.
Sandy, UT 84070
(801) 304-5500

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE OF INSURANCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE INSURANCE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Moonwalks For Fun

INSURER A: Prime Insurance Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

8545 West Irving Street
Wichita, KS 67277

"LIMITS SHOWN ARE THOSE IN
EFFECT AS OF POLICY INCEPTION"

COVERAGES

The policies of insurance listed below have been issued to the insured named above for the policy indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
<input checked="" type="checkbox"/> Commercial Liability <input checked="" type="checkbox"/> Claims Made <input type="checkbox"/> <input checked="" type="checkbox"/> Excluding Products and Complet	SC1103894	3/23/2011	3/23/2012	\$100,000 Per Person \$250,000 Per Accident \$1,000,000 Policy Aggregate
<input type="checkbox"/> Commercial Auto Liability Any Auto All Owned Autos Scheduled Autos Hired Autos Non-Owned Autos O.T.R.P.D.				
<input type="checkbox"/> Garage Coverage G.K.L.L. Drive Away D.O.C. Cargo On Hook Contractual Liability Wrongful Repossession				
<input type="checkbox"/> Excess Liability <input type="checkbox"/> Claims Made				

OTHER

DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Coverage is limited to only insured activities or operations identified in the Policy. Amusement - Food Concessions/ Games /Clothing Sales, Amusement - Non Supervised - Scheduled Interactive & Inflatable Game Rental -, Amusement - Party Rooms - Indoor Facility., Amusement - Supervised - Scheduled Interactive & Inflatable Game Rental -, Premises Liability - Scheduled Locations Only., Amusement - Dunk Tanks - Each., Inflatable Climbing Wall., Amusement - Scheduled Interactive games..

☒ **CERTIFICATE HOLDER** ☐ **ADDITIONAL INSURE** ☐ **LOSS PAYEE**

FOR PROOF OF INSURANCE ONLY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 0 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Handwritten Signature

Attachment 7

**Copy of revised Certificate of Insurance from Prime
Insurance Co., dated 4/27/11,
For period 3/23/11 through 3/23/12**

ADDITIONAL INSURED ENDORSEMENT**PAP-99-12****This Endorsement changes the terms and conditions of the Policy Issued. Please read it carefully!**

The following requirements govern coverage under the Policy and must be adhered to for coverage to be provided to the Insured under the Policy. No activities conducted by the Insured are covered under the Policy unless they are conducted in full compliance with all of the requirements specified below and in the Policy. The Insured must advise its employees, agents, contractors, and/or subcontractors of these requirements and ensure that they also abide by them for coverage to be provided. The Insured agrees and understands that any noncompliance with the following specified requirements and/or the terms and conditions set forth in the Policy will result in the denial of coverage under the Policy meaning the Insurer will not be obligated to indemnify or defend you.

Policy Number: SC1103894

Insured: Moonwalks For Fun

Effective Date: 4/27/2011

Additional Insured: City of Wichita

455 N Main Street
Wichita, KS 67202

Generating an additional premium of: \$0.00

The "Who is a Insured" provision of the Policy shall be amended to include the person or organization scheduled in this Endorsement as an Additional Insured for the limited purpose of liability arising from Your Work, as that term applies to the Insured only, and subject to all other terms and conditions of the Policy and this Endorsement.

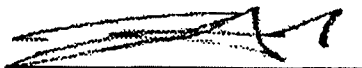
The coverage provided by this Endorsement only extends to cover the Additional Insured for allegations of liability based upon alleged, actionable conduct of the Insured and only to the extent the Insured would have been liable and coverage would have been afforded to the Insured under the terms and conditions of this Policy had such Claim been made against the Insured.

The Policy expressly provides that coverage is to be construed and enforced in accordance with the laws of the State of Utah, and the Insured has consented to the jurisdiction of the courts of the State of Utah and has agreed that those courts shall be the exclusive forum to hear and decide disputes consisting of or relating to coverage issues.

The Additional Insured is subject to all of the terms, provisions, conditions, exclusions, definitions, limitations, representations, and Endorsements of the Policy issued to the Insured, and all related documents providing coverage to the Insured. The failure of the Insured to adhere to any such provisions will also defeat coverage under the Policy for all Additional Insureds.

A copy of the Insured Policy may be obtained from the Insured or by contacting the Insurer office in Salt Lake City, Utah, during normal business hours.

Endorsement No.: 3



Rick J. Lindsey

528199110

Surplus Lines Tax \$0.00

Surplus Lines Fee \$0.00

CERTIFICATE OF INSURANCE				DATE (MM/DD/YYYY) 04/27/2011
PRODUCER AND THE NAMED INSURED I.E.B.S. 8722 S. Harrison St. Sandy, UT 84070 (801) 304-5500		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE OF INSURANCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE INSURANCE POLICIES BELOW.		
INSURED Moonwalks For Fun 8545 West Irving Street Wichita, KS 67277		INSURERS AFFORDING COVERAGE INSURER A: Prime Insurance Company INSURER B: INSURER C: INSURER D: INSURER E:		
"LIMITS SHOWN ARE THOSE IN EFFECT AS OF POLICY INCEPTION"				
COVERAGES The policies of insurance listed below have been issued to the insured named above for the policy indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.				
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
<input checked="" type="checkbox"/> Commercial Liability <input checked="" type="checkbox"/> Claims Made <input type="checkbox"/> PRODUCTS <input checked="" type="checkbox"/> Excluding Products and Complet	SC1103894	3/23/2011	3/23/2012	\$100,000 Per Person \$1,000,000 Per Accident \$1,000,000 Policy Aggregate
<input type="checkbox"/> Commercial Auto Liability Any Auto All Owned Autos Scheduled Autos Hired Autos Non-Owned Autos O.T.R.P.D.				
<input type="checkbox"/> Garage Coverage G.K.L.L. Drive Away D.O.C. Cargo On Hook Contractual Liability Wrongful Repossession				
<input type="checkbox"/> Excess Liability <input type="checkbox"/> Claims Made				
LIMITATION OF COVERAGE FOR ADDITIONAL INSURED Liability Coverage is only provided to the Additional Insured with respect to Accidents otherwise covered under the Policy/Coverage Contract where the Insured is found directly liable and not where the Additional Insured is found independently negligent of the Insured.				
DESCRIPTION OF OPERATION/LOCATION/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS Coverage is limited to only insured activities or operations identified in the Policy. Amusement - Food Concessions/ Games /Clothing Sales, Amusement - Non Supervised - Scheduled Interactive & Inflatable Game Rental -, Amusement - Party Rooms - Indoor Facility, Amusement - Supervised - Scheduled Interactive & Inflatable Game Rental -, Premises Liability - Scheduled Locations Only, Amusement - Dunk Tanks - Each, Inflatable Climbing Wall, Amusement - Scheduled Interactive games.				
<input type="checkbox"/> CERTIFICATE HOLDER		<input checked="" type="checkbox"/> ADDITIONAL INSURE		<input type="checkbox"/> LOSS PAYEE
City of Wichita 455 N Main Street Wichita, KS 67202		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.		
		AUTHORIZED REPRESENTATIVE 		

UDA-F-0310 03OCT2005

**City of Wichita
City Council Meeting
June 21, 2011**

TO: Mayor and City Council

SUBJECT: Petition to renovate building facade at 1525 East Douglas (District I)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Approve the petition and adopt the resolution.

Background: Since 2001, the City of Wichita has operated the Facade Improvement Program, which provides low-cost loans and grants to enhance the visual aesthetics of buildings located in defined areas needing revitalization, including the City's core area. In 2009, the Façade Program was revised to require that private funding for overall project costs be at least equal to public funding and that applicants show a financial need for public assistance in order to complete the project, based on the owner's ability to finance the project and assuming a market-based return on investment.

Fifteen Twenty Five, LLC has submitted the attached petition, as owners of 1525 East Douglas, for special assessment financing under the Façade Program to finance exterior improvements to the building as part of a larger renovation project. The project has received Historic Preservation Board approval.

Analysis: The existing project is a two story building on the corner of Douglas Avenue and Greenwood that will be used as the new location for GLMV Architecture. The overall project includes a \$3,490,000 renovation, including extensive interior and exterior improvements to the building. The \$498,000 facade project will include cleaning and repairing the existing terra cotta and brick, new storefront glazing and doors, and additional work to restore the building per historic guidelines. The Office of Urban Development has reviewed the economic (gap) analysis of the project and determined a financial need for incentives based on the current market.

The Office of Urban Development has also conducted a background check on the applicant. The records were reviewed by Urban Development and the Law Department. The records did not reveal any negative information of concern or a risk to the City.

The first step in approving a façade improvement project includes approval of the petition by the City Council and adoption of the attached resolution, which makes a finding that the project is advisable and sets a public hearing to consider the adoption of a maximum assessment ordinance to legally assess the façade project costs to the property. Once the ordinance is adopted and all other conditions are met, the property owner can cause the improvements to be built with the City paying the construction draws.

Financial Considerations: The façade project budget set forth in the petition is \$500,000, financed by special assessments under the Façade Improvement Program. An additional amount of \$30,000 is allocated from the grant funding component of the Facade Program.

When completed, the project will be financed by taxable general obligation special assessment bonds, paid as to principal and interest with special assessments levied against the improved property and backed by the full faith and credit of the City of Wichita. Included in the bond issue amount will be a financing contingency reserve equivalent to one year's debt service to mitigate risk and ensure the maximum

assessment is not exceeded. In addition, the owner will pay the construction costs until the façade project is complete and special assessments can be placed on the property.

Goal Impact: This project addresses the Dynamic Core Area goal by facilitating improvements to a privately owned building in the Delano Design District.

Legal Considerations: State Statutes provide the City Council authority to use special assessment funding for the project. The form of the petition and resolution has been approved by the Law Department

Recommendation/Action: It is recommended that the City Council approve the petition, adopt the resolution and authorize the necessary signatures.

Attachments: Petition and resolution.

First Published in the Wichita Eagle on June 24, 2011

RESOLUTION NO. 11-151

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF IMPROVEMENTS TO AREA WALL ON PUBLIC WAY OR LAND ABUTTING PUBLIC WAYS CONSISTING OF FACADE IMPROVEMENTS TO THE PORTION OF 1525 EAST DOUGLAS AVENUE THAT ABUTS PUBLIC WAYS, INCLUDING DOUGLAS AVENUE AND GREENWOOD AVENUE IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF CONSTRUCTING IMPROVEMENTS TO AREA WALLS ON PUBLIC WAY OR LAND ABUTTING PUBLIC WAYS CONSISTING OF FACADE IMPROVEMENTS TO THE PORTION OF 1525 EAST DOUGLAS AVENUE THAT ABUTS PUBLIC WAYS, INCLUDING DOUGLAS AVENUE AND GREENWOOD AVENUE IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Facade Improvements at 1525 E. Douglas abutting public ways, including Douglas Avenue and Greenwood Avenue.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Five Hundred Thousand Dollars (\$500,000).

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

Lot 209 Excluding the West 2.27 Feet thereof, and all of lots 211, 213, 215 and 217, on Douglas Avenue, in Knight's Addition to the City of Wichita, Sedgwick County, Kansas

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a square foot basis.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 6. The approved estimated cost of the Improvements is the estimated cost of the Improvements as set forth in this Resolution. The Finance Director shall prepare a proposed assessment roll for the Improvements which shall set forth the proposed maximum assessment against each lot, piece or parcel of land within the improvement district for the Improvements in the manner set forth in this Resolution based on such estimated cost of the Improvements. The proposed assessment roll shall be maintained on file with the City Clerk and be open for public inspection. Following preparation of the proposed assessment roll, the Governing Body shall hold a public hearing on the proposed maximum assessments on July 12, 2011, or the first regularly scheduled City Council meeting thereafter after compliance with the notice provisions set forth in this paragraph. The City Clerk shall publish notice of the public hearing for the improvement district at least once not less than 10 days prior to the public hearing, and shall mail to the owner of the property liable to pay the assessments, at its last known post office address, a notice of the hearing and a statement of the maximum cost proposed to be assessed all in accordance with K.S.A. 12-6a09.

SECTION 7. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 8. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of June, 2011.

By: _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, City Attorney

FACADE IMPROVEMENT PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Lots One (1), Three (3), Five (5), Seven (7) and Nine (9), on Fannie Avenue now Greenwood Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas; EXCEPT the west 17.37 feet there of, and

Lots Two Hundred and Eleven (211), Two Hundred and Thirteen (213), Two Hundred and Fifteen (215), Two Hundred and Seventeen (217); and Lot 209 EXCEPT the west 2.27 feet of said Lot 209, on Douglas Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas.

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et. seq. as amended, as follows:

- (a) That it is in the public interest to construct improvements to area walls on public way or land abutting public ways consisting of face improvements to the portion of 1525 East Douglas that abuts public ways, including abutting streets/right-of-way, East Douglas Avenue and Greenwood (Fannie) Avenue.
- (b) That the estimated and probable cost of the foregoing improvement being Five Hundred Thousand Dollars (\$500,000), exclusive of the cost of interest on borrowed money, with Five Hundred Thousand Dollars (\$500,000) payable by the improvement district none payable by the City at Large.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any stage during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or

construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a square foot basis.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
-------------------	-----------	------

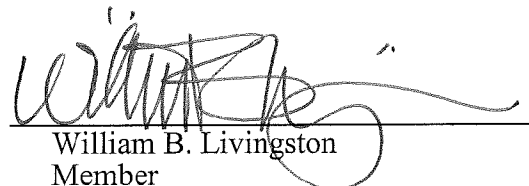
IMPROVEMENT DISTRICT

Lots One (1), Three (3), Five (5), Seven (7) and Nine (9), on Fannie Avenue now Greenwood Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas; EXCEPT the west 17.37 feet there of, and

Lots Two Hundred and Eleven (211), Two Hundred and Thirteen (213), Two Hundred and Fifteen (215), Two Hundred and Seventeen (217); and Lot 209 EXCEPT the west 2.27 feet of said Lot 209, on Douglas Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas.

FIFTEEN TWENTY-FIVE, LLC 5/26/11

By:


William B. Livingston
Member

**City of Wichita
City Council Meeting
June 21, 2011**

TO: Mayor and City Council

SUBJECT: 2011-2012 Special Liquor Tax Request for Proposals (RFPs)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Approve the Special Liquor Tax Coalition 2011-2012 funding allocations, authorize provider contracts developed for those allocations, and authorize the necessary signatures.

Background: At their December 14, 1999 meeting, the City Council established policy guidelines for the use and administration of the Special Liquor Tax dollars designated for alcohol and substance abuse prevention and treatment. These policy guidelines were reviewed and reaffirmed at a May 24, 2005 City Council workshop and are being used in the operation and administration of the 2011 Special Liquor Tax Program.

In September of 2010, a comprehensive Special Liquor Tax services Request for Proposals (RFP) was issued by the City's Purchasing Office to procure services for the 2011 calendar year. At its December 14, 2010 meeting, the City Council approved a provider operating budget of \$1,276,166, which uses 12 different organizations to operate 16 projects in the provision of alcohol and substance abuse prevention and treatment services. The 2011 Special Liquor Tax Program includes eight prevention and eight treatment projects, with case management services built into the projects, where appropriate. These projects address diverse populations, which include children and adults, men and women, various ethnic groups and judicially detained/revered individuals.

At the December 14, 2010 meeting, the City Council also authorized the immediate release of two new RFPs in addition to the provider operating budget. The new RFPs were released in response to the City's October 17, 2010 receipt of Parallax, Inc. notice that it was closing its doors effective October 22, 2010 and terminating its Social Detoxification Services and Chronic Relapse contracts with the City. A social detoxification services RFP budgeted at \$276,000 and an innovative projects RFP budgeted at \$105,611 were released using funds previously budgeted for the two Parallax projects. The innovative projects RFP generated 11 proposals totaling \$822,030 while the social detoxification RFP generated no responses.

In an effort to respond to the unmet need for intermediate care beds, previously supplied by Parallax, Inc., and to also create additional intermediate substance abuse treatment options, a substance abuse intermediate treatment services RFP was issued by the City's Purchasing Office on April 4, 2011. The intermediate treatment services generated under this RFP would allow the City of Wichita Municipal Court system to use treatment services as a condition of probation, or in lieu of jail, for those clients who do not have access to other opportunities for inpatient services. The RFP was budgeted at the \$276,000, the amount in the social detoxification RFP. This intermediate treatment services RFP generated one proposal from Mirror, Inc. totaling \$276,000.

Analysis: The Special Liquor Tax process is overseen by the Special Liquor Tax Coalition. Its members assess Special Liquor Tax Program needs and make program-funding recommendations to the City Council. The Coalition has reviewed the proposals received in response to the innovative projects and intermediate treatment service RFPs. Based on those reviews the Coalition is recommending that the Council approve allocations and contracts for two projects received in response to the innovative projects RFP, and for the Mirror, Inc. project received in response to the intermediate treatment services RFP.

The operating periods for projects procured through the innovative projects and intermediate treatment services RFPs will be July 1, 2011 through June 30, 2012.

The three Special Liquor Tax treatment proposals recommended for 2011-2012 funding include case management services built into the projects. The recommended projects address individuals coming out of the criminal justice and court systems and are designed to provide a continuum of services to prevent relapse in the individuals who receive treatment services. This continuum of services for clients would include pretreatment services upon exiting the criminal justice system, admission for inpatient intermediate treatment services for substance use issues and after-care and outpatient services designed to provide support services, peer-to-peer mentoring and recovery oriented connections.

The attached proposal summaries for recommended and non-recommended programs includes short descriptions of each program and, for those proposals not recommended for funding, the reasoning behind that recommendation. All proposals recommended for funding contain outcome-based measures, which will be monitored for successful performance during the 2011-2012 funding period.

The following chart lists the 12 proposals received in response to the two RFPs and evaluated for 2011-2012 funding, their 2011-2012 funding requests and the Coalition's 2011-2012 funding recommendations.

Proposals Received in Response to RFPs T = Treatment & P = Prevention	2011-2012 Proposal Request	2011-2012 Recommended Funding
Innovative Pilot Programs RFP		
Center for Health & Wellness, T	\$ 66,000	\$ 0
Higher Ground: Turning Point, T	\$ 40,000	\$ 40,000
Hope Street Youth Development: The Reality Project, P	\$ 66,641	\$ 0
Kansas Children's Service League, P	\$ 105,442	\$ 0
King's Treatment Center, T	\$ 95,180	\$ 0
Mental Health Association: CRA(FT) Project, T	\$ 105,611	\$ 0
Mirror, Inc.: Project Towards No Drug Abuse, P	\$ 98,529	\$ 0
Partners for Wichita: Safe Streets Wichita Youth Corps, P	\$ 15,000	\$ 0
St. Francis: Amazing Alternatives, P	\$ 26,076	\$ 0
Substance Abuse Center of Kansas, Peer Mentoring, T	\$ 104,000	\$ 65,611
Youth Development Services: High Five-Deme Un Cinco, P	\$ 99,551	\$ 0
Subtotals	\$ 822,030	\$ 105,611
Substance Abuse Intermediate Treatment RFP		
Mirror, Inc., Intermediate Substance Abuse Treatment Services	\$ 276,000	\$ 276,000
Totals	\$1,098,030	\$ 381,611

Financial Considerations: 2011-2012 Special Liquor Tax funding will be available to develop contracts for providers of the three recommended projects totaling \$381,611 and procured through the Substance Abuse Intermediate Treatment and Innovative Pilot Programs RFPs. No General Funds are obligated.

Goal Impact: The fulfillment of provider agreements will Enhance the Quality of Life of Wichita residents by reducing the negative consequences of alcohol and other drug abuse.

Legal Considerations: Approval as to form by the Law Department will be obtained prior to the execution of all 2011-2012 Special Liquor Tax provider agreements.

Recommendation/Actions: It is recommended that the City Council approve the Special Liquor Tax Coalition 2011-2012 funding allocations, authorize provider contracts developed for those allocations, and authorize the necessary signatures.

Attachments: Proposal summaries for recommended and non-recommended programs.

PROGRAMS RECOMMENDED FOR FUNDING

Treatment (3)

Higher Ground: Turning Point		
Currently: \$80,000.00	Requested: \$40,000.00	Awarded: \$40,000.00
Total: \$120,000.00		
<p>The Higher Ground Turning Point program is an outpatient substance abuse treatment program that offers assessment, referral, intensive outpatient, outpatient, continuing care, case management, and family education services. The target population for this program includes adults who have chronic relapse histories, and require more “support rich” services, many of whom are exiting from incarceration and also require assistance re-entering the community. The Turning Point is an important enhancement for the current treatment system funded by the Special Liquor Tax. This program allows those individuals who are exiting the intermediate treatment program at Mirror Inc. to access the more intensive and support rich outpatient services chronically relapsing clients need. Higher Ground plans to serve an additional 60 adults with this funding.</p>		

Substance Abuse Center of Kansas: Peer Mentoring		
Currently: \$150,000.00	Requested: \$104,000.00	Awarded: \$65,611.00
Total: \$215,611.00		
<p>The Substance Abuse Center of Kansas (SACK) currently serves a target of 750 clients with assessment, pre-treatment group, referral, and care coordination services. The agency requested additional funds in order to add peer mentoring to their available services. The mentor will serve as a bridge for the client to community resources, reduce barriers to treatment engagement and recovery, and advocate for the client. This program enhances the current continuum funded by the Special Liquor Tax, in that SACK has also agreed to work with Mirror Inc. in providing a number of services to clients entering and exiting their program, including pre-treatment, after care, and transportation services. Additionally, the peer mentors are working with a very vulnerable population, as clients are frequently on waiting lists for treatment, and with their engagement an increased number of clients will hopefully follow through with treatment recommendations.</p>		

Mirror Inc.: Intermediate Substance Abuse Treatment Services		
Currently: N/A	Requested: \$276,000.00	Awarded: \$276,000.00
<p>Mirror Inc. has added seven beds to their residential facility, and is providing intermediate treatment services for clients referred by the City of Wichita Municipal Court. Mirror Inc. was selected to provide this service as they agreed to meet all requirements from the City, including adding beds to the current treatment system, providing client transportation, reporting on outcomes, and utilizing the City as a payer of last resort. In providing the Court this referral option for clients who need treatment but cannot access and/or pay for it, this should relieve some of the burden on the City jail and court systems.</p>		

PROGRAMS NOT RECOMMENDED FOR FUNDING

Prevention (6)

Hope Street Youth Development: The Reality Project		
Currently: N/A	Requested: \$66,641.00	Awarded: \$0.00
<p>The Reality Project is a prevention program which uses social media through the “Popular Opinion Leader” model to plan, host, and evaluate a large scale drug and alcohol free social event for middle and high school students.</p> <p>This program was not selected for funding because the outcomes and measurement tools included were not strong. The proposal did not offer any population targeting to try and reach youth at higher risk, but was rather open to anyone volunteering to attend. There was a concern regarding cost-effectiveness, given the high administrative costs and stipends to youth for providing a one-time event. Additionally, there was not enough evidence that participants attending this one social event would experience any kind of long-term impact or change.</p>		

Kansas Children’s Service League		
Currently: N/A	Requested: \$105,442.00	Awarded: \$0.00
<p>The Kansas Children’s Service League proposed providing parent education for two hundred men and women receiving treatment at Options Treatment Center and the Women’s Recovery Center. They would offer “The Incredible Years” curriculum for parents of children ages 0-8 and “Guiding Good Choices” for parents of youth ages 9-14, which are both evidence-based programs.</p> <p>This program was not selected for funding because there are limited dollars available, and the Coalition did not see a pressing need in the community to fund additional parenting programs. Also, there were concerns that because Options and WRC are the treatment providers, they should be subcontracting with KCSL, as they are already being paid to provide treatment for clients, which typically includes parent education groups. There was also concern that clients would not be able to complete and get the full benefits of the program, as it is twelve weeks long and typical intermediate treatment lasts thirty days.</p>		

Mirror Inc.: Project Towards No Drug Abuse		
Currently: N/A	Requested: \$98,529.00	Awarded: \$0.00
<p>Mirror Inc.’s Project Towards No Drug Abuse is a prevention program that creates fourteen educational opportunities for a target of 140 youth at the Gateway and Metro-Boulevard Alternative Schools, covering various topics related to substance abuse.</p> <p>This program was not selected for funding as the Coalition had a limited number of dollars to allocate, and though it was a well-prepared proposal, the Coalition’s priority was to enhancement the treatment continuum. There were also questions about charges to the program budget that were not detailed in the program narrative, which created some confusion on what activities would take place.</p>		

Partners for Wichita: Safe Streets Wichita Youth Corps- Planeview		
Currently: N/A	Requested: \$15,000.00	Awarded: \$0.00
<p>Partners for Wichita currently receives Liquor Tax funds for the Wichita Safe Streets Youth Corp, which works with existing youth groups in a North Wichita community where substance abuse and gang violence is high. This application proposed expanding the program into the Planeview neighborhood so that the Youth Corps could work with the youth in this area, impacting participants and their neighborhood through service projects.</p> <p>This project was not selected for funding as there was no demonstration that services would be targeted to youth who genuinely need prevention education. The proposed outcomes were also not strong measures of program performance or impact.</p>		

St. Francis: Amazing Alternatives		
Currently: N/A	Requested: \$26,076.00	Awarded: \$0.00
<p>The Amazing Alternatives prevention program focuses on alcohol and drug education for youth under age 15 who have been experimenting with substances or need additional education due to exposure to drugs or alcohol within their environment.</p> <p>This program was not funded because the Coalition was not convinced about the need in the community at this time for this type of program and there is limited funding available.</p>		

Youth Development Services: High Five- Deme Un Cinco		
Currently: N/A	Requested: \$99,551.00	Awarded: \$0.00
<p>Youth Development Services requested funding for their High Five- Deme Un Cinco program, which provides youth mentoring, educational advocacy, home visits, and family meetings for a target of 33 youth in the 67214 zip code.</p> <p>This program was not selected for funding because the Coalition did not see evidence that this program would impact youth at risk for substance abuse. The focus of the program is on academic success, which while important, is not the goal of Special Liquor Tax funds. Correspondingly, the performance outcomes do not relate to the prevention or reduction of substance use. Additionally, the program did not demonstrate cost effectiveness, spending over \$3,000 on each child served, which is considered very high.</p>		

Treatment (3)

The Center for Health and Wellness		
Currently: \$150,000.00	Requested: \$66,000.00	Awarded: \$0.00
<p>The Center for Health and Wellness currently receives \$150,000 to provide outpatient substance abuse treatment for adults. Their proposal asked for an additional \$66,000 to add adolescent pre-treatment, outpatient, intensive outpatient, and continuing care services to their continuum. The program targeted thirty African American youth age eighteen and under. This proposal was not selected for funding because the program was structured around the Risk-Need-Responsivity model, which has been developed specifically for and proven effective with decreasing criminal recidivism. There was not a strong enough case made to link this model to substance abuse treatment. Additionally the cost per client was high, costing \$2,200 per client served.</p>		

King's Treatment Center		
Currently: N/A	Requested: \$95,180.00	Awarded: \$0.00
<p>The King's Treatment Center program provides assessment and referral services, individual outpatient, group outpatient, and family group sessions for individuals with a substance abuse disorder using evidence-based Motivational Interviewing, Motivational Enhancement, and Dialectical Behavioral Therapy in their treatment.</p> <p>The program was not selected for funding as it only proposed expanding current services already available, and was not offering any kind of new programming. Additionally, this population appears to be a group for which services could be billed to alternative sources, and with the limited number of dollars available, the Coalition did not want to fund potentially duplicative outpatient services.</p>		

Mental Health Association of South Central Kansas: CRA(FT) Project		
Currently: N/A	Requested: \$105,611.00	Awarded: \$0.00
<p>The CRA(FT) Project is a program with two components. One includes direct outpatient treatment services for clients, including assessment, group therapy, individual and family sessions, and case management, targeted to adult clients in the first year, with adolescents added in the second year. MHA also proposed organizing and offering a community-wide training open to all providers that would cover two days and bring in outside experts on the CRA(FT) model, which is a comprehensive cognitive behavioral program to treat substance abuse.</p> <p>This proposal was not selected for funding because the Coalition felt that there currently are a large number of excellent outpatient treatment providers already available. There were also concerns about long-term sustainability, as MHA currently is not licensed to bill other sources, making the City Liquor Tax their sole source of funding.</p>		

CITY OF WICHITA
City Council Meeting
June 21, 2011

TO: Mayor and City Council Members

SUBJECT: Amendments to Motor Vehicle Safety Belt Use Ordinance, Section 11.38.285

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Approve the Mayor's Request for Declaration of Emergency and pass the ordinance amending Section 11.38.285 of the Code of the City of Wichita, on a single reading.

Background: The State of Kansas passed House Bill 2192 during the 2011 legislative session, pertaining to the creation of uniform fine and cost provisions for safety belt violations. Currently, violations of City of Wichita Ordinance 11.38.285(b), safety belt violations, require that the violator be assessed a fine, including court costs that total \$30.00. HB 2192 mandated that all municipalities adopt state penalty provisions for safety belt violations. The fine and costs for violation, by an adult, is \$10.00 and no court costs may be assessed. This provision takes effect July 1, 2011.

Analysis: Amendments to City of Wichita Ordinance 11.38.285 are required to make the fine and court cost penalties uniform with Kansas Statutes, as provided in HB 2192.

Financial Considerations: Currently, City Ordinance imposes a fine of \$30, including court costs. HB 2192 amended the penalty provisions to mandate a fine of \$10 and no court costs. In 2009, there were a total of 3,240 citations issued for violations of City of Wichita Ordinance No. 11.38.285(b), failing to wear a safety belt, when 18 years of age or older. In 2010, there were a total of 5,067 citations issued for the same offense. It is estimated that lost revenue will be approximately \$100,000.

Goal Impact: Provide a Safe and Secure Community. This ordinance will allow the Police Department to continue to enforce safety belt violations.

Legal Considerations: The ordinance amendment has been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council declare a public emergency and adopt the ordinance making the recommended amendments to City of Wichita Code Section No. 11.38.285.

Attachment: Delineated and clean copies of the proposed ordinance and a Declaration of Emergency

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June 21, 2011

ORDINANCE NO. 48-022

AN ORDINANCE AMENDING SECTION 11.38.285 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE MOTOR VEHICLE SAFETY BELT USE AND REPEAL OF THE ORIGINAL SECTION 11.38.285

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 11.38.285 of the Code of the City of Wichita, Kansas, shall read as follows:

(a) As used in this section "passenger car" means a motor vehicle, manufactured or assembled after January 1, 1968, or a motor vehicle manufactured or assembled prior to 1968 which was manufactured or assembled with safety belts, with motive power designed for carrying ten passengers or fewer, including vans, but does not include a motorcycle, or motor-driven cycle.

(b) Except as provided in subsection (d), each occupant of a passenger car manufactured with safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is 18 years of age or older, shall have a safety belt properly fastened about such person's body at all times when the passenger car is in motion.

(c) Each occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208, who is at least 14 years of age but less than 18 years of age, shall have a

safety belt properly fastened about such person's body at all times when the passenger car is in motion.

(d) This section does not apply to:

(1) An occupant of a passenger car who possesses a written statement from a licensed physician that such person is unable for medical reasons to wear a safety belt system;

(2) Carriers of United States mail while actually engaged in delivery and collection of mail along their specified routes;

(3) Newspaper delivery persons while actually engaged in delivery of newspapers along their specified routes; or

(e) Law enforcement officers shall not stop drivers for violations of subsection (b) by a back seat occupant in the absence of another violation of law. A citation for violation of subsection (b) by a back seat occupant shall not be issued without citing the violation that initially caused the officer to effect the enforcement stop.

(f) Persons violating subsection (b) and amendments thereto, shall be fined \$10.00 and no court costs. Persons violating subsection (c) and amendments thereto shall be fined \$60.00 and no court costs.

(g) The municipal court shall not report violations of this act to the department of revenue.

(h) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect

without the invalid provisions or application, and to this end the provisions
of this section are severable.

SECTION 2. The original of Section 11.38.285 of the Code of the City of
Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall be included in the Code of the City of
Wichita, Kansas, and shall be effective upon its passage and publication once in the
official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of
June, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

(First Published in The Wichita Eagle on _____)

ORDINANCE NO.

DELINEATED

June 21, 2011

AN ORDINANCE AMENDING SECTION 11.38.285 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE MOTOR VEHICLE SAFETY BELT USE AND REPEAL OF THE ORIGINAL SECTION 11.38.285

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 11.38.285 of the Code of the City of Wichita, Kansas, shall read as follows:

“(a) As used in this section ‘passenger car’ means a motor vehicle, manufactured or assembled after January 1, 1968, or a motor vehicle manufactured or assembled prior to 1968 which was manufactured or assembled with safety belts, with motive power designed for carrying ten passengers or fewer, including vans, but does not include a motorcycle, or motor-driven cycle.

(b) Except as provided in subsection (d), each occupant of a passenger car manufactured with safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is 18 years of age or older, shall have a safety belt properly fastened about such person's body at all times when the passenger car is in motion.

(c) Each occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208, who is at least 14 years of age but less than 18 years of age, shall have a

safety belt properly fastened about such person's body at all times when the passenger car is in motion.

(d) This section does not apply to:

(1) An occupant of a passenger car who possesses a written statement from a licensed physician that such person is unable for medical reasons to wear a safety belt system;

(2) Carriers of United States mail while actually engaged in delivery and collection of mail along their specified routes;

(3) Newspaper delivery persons while actually engaged in delivery of newspapers along their specified routes; or

~~(4) An occupant of a passenger car required to be protected by a safety restraining system under the child passenger safety act.~~

(e) Law enforcement officers shall not stop drivers for violations of subsection (b) by a back seat occupant in the absence of another violation of law. A citation for violation of subsection (b) by a back seat occupant shall not be issued without citing the violation that initially caused the officer to effect the enforcement stop.

(f) Persons violating subsection (b) and amendments thereto, shall be fined ~~\$30.00~~ \$10.00 ~~including~~ and no court costs. Persons violating subsection (c) and amendments thereto shall be fined \$60.00 ~~including~~ and no court costs.

(g) The municipal court shall not report violations of this act to the department of revenue.

(h) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provisions or application, and to this end the provisions of this section are severable.”

SECTION 2. The original of Section 11.38.285 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

REQUEST FOR DECLARATION OF EMERGENCY

REQUEST OF THE MAYOR OF THE CITY OF WICHITA, KANSAS, FOR THE DECLARATION BY THE CITY COUNCIL OF SAID CITY OF THE EXISTENCE OF A PUBLIC EMERGENCY REQUIRING THE ADOPTION OF AN ORDINANCE BELOW DESIGNATED.

TO THE MEMBERS OF THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

I, Carl Brewer, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the day of its introduction, to wit, June 21, 2011, of an ordinance entitled:

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 11.38.285 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO MOTOR VEHICLE SAFETY BELT USE AND REPEAL OF THE ORIGINAL SECTION 11.38.285.

The general nature of such public emergency lies in the need to pass and publish this ordinance to conform to the legislative changes regarding mandatory fine and cost provisions for enforcement of safety belt violations. The legislative changes to safety belt enforcement under the provisions of HB 2192, requires amendment of this ordinance to maintain the mandated restrictions under state statute. Amendment to Section 11.38.285 of the Code of the City of Wichita, will allow law enforcement officers to continue to issue citations, for violation of the safety belt ordinance. HB 2192 requires that all municipalities adopt the uniform fine amount of \$10.00 including court costs for violation of this traffic offense. This mandate takes effect July 1, 2011.

It is therefore expedient at this time that the City Council find and determine that a public emergency exists by reason of the foregoing and that the above entitled Ordinance be finally adopted on the day of its introduction.

Executed at Wichita, Kansas on this day of June 21, 2011.

MAYOR OF THE CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(Seal)

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney

CITY OF WICHITA
City Council Meeting
June 21, 2011

TO: Mayor and City Council Members

SUBJECT: Ordinance amendments relating to Driving Under the Influence, Sections 11.38.150, 11.38.155 and 11.38.157 of the Code of the City of Wichita.

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Approve the Mayor's Request for Declaration of Emergency and adopt the Ordinance amending Sections 11.38.150, 11.38.155 and 11.38.157 of the Code of the City of Wichita, on a single reading.

Background: The Kansas Legislature recently amended the state statutes regarding DUI offenses, in response to recommendations of the Kansas DUI Commission. The bill passed by the Legislature makes a number of substantive changes to the state laws regarding DUI offenses. Beginning in 2012, the new laws prohibit Alcohol Drug Safety Action Program (ADSAP) fees from being assessed by the courts. At that time, all alcohol and drug evaluations will be required to be completed by providers certified by the Department of Social and Rehabilitation Services (SRS). Probation staff will need to obtain certification from SRS prior to that time in order to continue to perform these evaluations.

Analysis: The proposed amendments:

- Increase the minimum fine for all DUI offenders by \$250. For first offenses, the new fine is \$750, second offenses is \$1,250 and third offenses is \$1,750.
- Shorten the time frame in which the court can look back to consider prior convictions for sentencing purposes. The lookback period for prior DUI offenses has been reduced from a lifetime lookback to a period after July 1, 2001. The lifetime lookback period remains in place for DUI offenses involving defendants with commercial driver's licenses.
- Allow the court to use house arrest and work release for the required periods of incarceration after the defendant has served forty eight hours.
- Allow municipal courts, under some circumstances, to prosecute third offense DUIs as a misdemeanor. Previously, all third DUI offenses were considered felony offenses.
- Increase the period of time, following operation of a motor vehicle, from two hours to three hours, that a breath test may be used to establish the offense of driving under the influence.
- Repeal the City's concurrent jurisdiction over offenses, which would otherwise be a felony. The concurrent jurisdiction will not apply to offenses occurring after July 1, 2011.
- Amend provisions of the City Code relating to preliminary breath tests, to include those for saliva samples.

The amendments are necessary to bring the City's Ordinances into compliance with the Kansas statutes.

Financial Considerations: The amendments will temporarily result in an increase of fines. It is estimated that additional fines of \$225,000 will be generated during 2011. After July 1, 2012, the increased fine will partially offset the loss of ADSAP funding. The repeal of concurrent jurisdiction over some third offense DUI charges may reduce jail fees assessed against the City.

Goal Impact: Provide a Safe and Secure Community.

Legal Considerations: The amendments have been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council declare a public emergency and adopt the ordinances making the recommended amendments to Sections 11.38.150, 11.38.155 and 11.38. 157 of the Code of the City of Wichita.

Attachment: Delineated and clean copies of the proposed Ordinance, Request for Declaration of Emergency.

6/13/2011

ORDINANCE NO. 49-023

AN ORDINANCE AMENDING SECTIONS 11.38.150, 11.38.155 AND 11.38.157 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS ILLEGAL AND REPEALING THE ORIGINALS OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1 Section 11.38.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Driving under the influence of alcohol and/or drugs unlawful—

Penalty. (a) No person shall operate or attempt to operate any vehicle within the city while:

(1) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle is .08 or more;

(2) Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(3) The alcohol concentration in the person's blood or breath as shown by any competent evidence is .08 or more. For the purposes of this section, "any competent evidence" includes (1) Alcohol concentration tests obtained from samples taken three hours or more after the operation

or attempted operation of a vehicle, and (2) readings obtained from a partial alcohol concentration test on a breath testing machine;

(4) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(6) If the person is a habitual user of any narcotic, hypnotic, omnificent or stimulating drug.

(b) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months imprisonment or, in the court's discretion, one hundred hours of public service, and fined not less than seven hundred fifty dollars nor more than one thousand dollars. The person convicted shall serve at least forty-eight consecutive hours' imprisonment or one hundred hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the person convicted under a house arrest program pursuant to section 249 of Chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment.

(c) On a second conviction of a violation of this section, a person shall be sentenced to not less than ninety days nor more than one year imprisonment and fined not less than one thousand two hundred fifty dollars nor more than one

thousand seven hundred fifty dollars. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment; provided, such work release program requires such person to return to confinement at the end of the each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of one hundred twenty hours of confinement. Such one hundred twenty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to Section 249 of Chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of one hundred twenty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the one hundred twenty hours.

(d) On a third offense, unless such person has a prior conviction which occurred within the preceding ten years, not including any period of incarceration,

the person convicted shall be sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than one thousand seven hundred fifty dollars nor more than two thousand five hundred. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least ninety days' imprisonment. The ninety days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of two hundred forty hours of confinement. Such two hundred forty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to section 349 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours imprisonment, the person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of two hundred forty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the two hundred forty hours.

(e) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendations made by the provider after such evaluation, unless otherwise ordered by the court.

(f) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(g) Any person convicted of violating this section who had one or more children under the age of fourteen years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(h) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than ninety days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(i) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to

five dollars for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(j) Except as provided in paragraph (4), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period of one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(1) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section;

(2) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

a. Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

b. Whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(3) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such imprisonment or immobilization.

(4) As used in this subsection, the convicted person's motor vehicle or vehicles shall not include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(k) The court shall electronically report every plea of guilty or conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the Kansas Bureau of Investigation Central Repository. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the Division and Kansas Bureau of Investigation, a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of the state.

(l) For the purpose of determining whether a conviction is a first, or second, in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state, or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) Only convictions occurring on or after July 1, 2001 shall be taken into account when determining the sentence to be imposed for a first or second offender.

(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense.

(5) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or a state statute or ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(m) Suspension, restriction or suspension and restriction of the driving privileges of a person convicted of a violation of this section should be done in accordance with the provisions of K.S.A. 8-1014 and 8-1015, and amendments thereto.

(n) The court shall be authorized to order any person convicted of a violation of this section to pay restitution to any victim who has suffered loss due to the violation for which the person was convicted.

(o) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement established pursuant to K.S.A. 12-4413 et seq. and amendments thereto, shall not constitute plea bargaining.

(p) The alternatives set out in subsections (a)(1), (2) and (3) of this section may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case of the fact finder.

(q) For the purpose of this section:

(1) 'Alcohol concentration' means the number of grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath;

(2) 'Imprisonment' includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the city council.

(3) 'Drug' includes toxic vapors.

(4) 'Toxic Vapors' are defined as including the following substances or products containing such substances: (a) Alcohols, including

methyl, isopropyl, propyl or butyl; (b) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate; (c) acetone; (d) Benzene (e) Carbon tetrachloride; (f) Cyclohexane; (g) Freons, including freon 11 and freon 12; (h) Hexane; (i) Methyl ethyl ketone; (j) Methyl isobutyl ketone (k) Naptha; (l) Perchlorethylene; (m) Toluene; (n) Trichloroethane; and/or Xylene.

(r) Should any court declare any subsection, clause or provision of this section to be unconstitutional, such decision shall affect only such subsection, clause or provision so declared unconstitutional and shall not affect any other subsection, clause or provision of this section.

(s) The Municipal Court shall have jurisdiction over a violation of this section occurring prior to July 1, 2011, and on or after July 1, 2006, which is concurrent with the jurisdiction of the district court for violation of K.S.A. 8-1567, and amendments thereto, notwithstanding that the elements of this section are the same as the elements of K.S.A. 8-1567, and amendments thereto, that would constitute, and be punished as a felony.”

SECTION2. Section 11.38.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Driving a commercial vehicle while under the influence of alcohol and/or drugs illegal—Penalty—Testing and reporting.

(a) No person shall operate any commercial motor vehicle, as defined in K.S.A. 8-2, 128, and amendments thereto, within the city while:

(1) the alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, as

defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .04 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more; or

(3) committing a violation of Section 11.38.150, and amendments thereto.

(b) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months imprisonment or, in the court's discretion, one hundred hours of public service, and fined not less than seven hundred fifty dollars nor more than one thousand dollars. The person convicted must serve at least forty-eight consecutive hours' imprisonment or one hundred hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(c) On a second conviction of a violation of this section, a person shall be sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than one thousand two hundred fifty dollars (\$1,250.00) nor more than one thousand seven hundred fifty dollars. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment, provided such work release program requires such person to

return to confinement at the end of the each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of one hundred twenty hours of confinement. Such one hundred twenty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment. The person convicted, if placed under house arrest shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of one hundred twenty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement, shall not be counted as part of the one hundred twenty hours.

(1) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendment thereto. The person shall be required to follow any recommendations made by the provider after such evaluation, unless otherwise ordered by the court.

(d) Any person convicted of a violation of this section who had one or more children under the age of fourteen years in the vehicle at the time of the

offense shall have such persons' punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(e) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(f) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than ninety days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(g) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or any an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(h) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of the section, the court shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and (2) Kansas Bureau of Investigation central repository all criminal history record information concerning such person.

(i) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of a law of another state or an ordinance of any city or resolution of any county, which prohibits the acts that this section prohibits'

(2) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third or subsequent offender; and

(3) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(j) For the purpose of this section:

(1) 'Alcohol concentration' means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) 'imprisonment' shall include any restrained environment in which the court and law enforcement agency intend to retain custody and

control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city; and

(3) 'drug' includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and amendments thereto.

(k) Whenever a law enforcement officer has reasonable ground to believe a person has been driving a commercial motor vehicle in violation of the provisions of this section, such officer shall follow the procedures for notice, testing, and certification of test refusal or results as set forth in K.S.A. 8-2, 145 and amendments thereto.

(l) It shall not be a defense that the person did not understand the notices required by this section."

SECTION 3. Section 11.38.157 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Refusal to submit to a preliminary breath test—Penalty.

(a) A law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath, saliva, or both if the officer has reasonable grounds to believe that the person: (1) has alcohol in the person's body; (2) has committed a traffic infraction; or (3) has been involved in a vehicle accident or collision.

(b) At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3)

further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test.

(c) Refusal to take and complete the test as requested is a traffic infraction punishable by a fine not more than five hundred dollars. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

(d) Any preliminary screening of a person's breath shall be conducted with a device approved pursuant to K.S.A. 65-1,107 and amendments thereto. Any preliminary screening of a person's saliva shall be conducted with a device approved pursuant to Section 2, of 2010 House Substitute for Senate Bill No. 6."

SECTION 4. The originals of Sections 11.38.150, 11.38.155 and 11.38.157 and of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 5. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of June,
2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED

6/13/2011

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 11.38.150, 11.38.155 AND 11.38.157 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS ILLEGAL AND REPEALING THE ORIGINALS OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1 Section 11.38.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Driving under the influence of alcohol and/or drugs unlawful—

Penalty. (a) No person shall operate or attempt to operate any vehicle within the city while:

(1) The alcohol concentration in the person's blood or breath, as measured within ~~two~~ three hours of the time of operating or attempting to operate a vehicle is .08 or more;

(2) Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(3) The alcohol concentration in the person's blood or breath as shown by any competent evidence is .08 or more. For the purposes of this

section, "any competent evidence" includes (1) Alcohol concentration tests obtained from samples taken ~~two~~ three hours or more after the operation or attempted operation of a vehicle, and (2) readings obtained from a partial alcohol concentration test on a breath testing machine;

(4) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

~~(b) (6) No person shall operate or attempt to operate any vehicle within this city if~~ If the person is a habitual user of any narcotic, hypnotic, omnificent or stimulating drug.

~~(e) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of the state shall not constitute a defense against the charge.~~

~~(d)~~ (b) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months imprisonment or, in the court's discretion, one hundred hours of public service, and fined not less than ~~five~~ seven hundred fifty dollars nor more than one thousand dollars. The person convicted ~~must~~ shall serve at least forty-eight consecutive hours' imprisonment or one hundred hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the

person convicted under a house arrest program pursuant to section 249 of Chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment. ~~In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both such education and treatment programs.~~

(e) (c) On a second ~~or a subsequent~~ conviction ~~pursuant to section (s),~~ of a violation of this section, a person shall be sentenced to not less than ninety days nor more than one year imprisonment and fined not less than one thousand two hundred fifty dollars nor more than one thousand ~~five~~ seven hundred fifty dollars. The person convicted ~~must~~ shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment; provided, such work release program requires such person to return to confinement at the end of the each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of one hundred twenty hours of confinement. Such one hundred twenty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's

work day. The court may place the person convicted under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ Section 249 of Chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of one hundred twenty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the one hundred twenty hours. ~~As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and amendments thereto.~~

(d) On a third offense, unless such person has a prior conviction which occurred within the preceding ten years, not including any period of incarceration, the person convicted shall be sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than one thousand seven hundred fifty dollars nor more than two thousand five hundred. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least ninety days' imprisonment. The ninety days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours'

imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of two hundred forty hours of confinement. Such two hundred forty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to section 349 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours imprisonment, the person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of two hundred forty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the two hundred forty hours.

(e) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendations made by the provider after such evaluation, unless otherwise ordered by the court.

(f) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

~~(f)~~ (g) Any person convicted of violating this section who had one or more children under the age of fourteen years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

~~(g)~~ (h) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than ninety days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

~~(h)~~ (i) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to five dollars for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient

amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

~~(i)~~ (j) Except as provided in paragraph (4), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period of one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(1) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section;

(2) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

~~(A)~~ a. Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

~~(B)~~ b. Whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(3) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such imprisonment or immobilization.

(4) As used in this subsection, the convicted person's motor vehicle or vehicles shall not include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

~~(j) — Except as provided in paragraph (j)(2), in addition to any other penalty which may be imposed upon a second or subsequent conviction pursuant to section (s), the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees, or other immobilization costs.~~

~~(1) — Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.~~

~~(2) — As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the~~

~~lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.~~

(k) The court shall electronically report every plea of guilty or conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the ~~Division of Motor Vehicles of the Kansas Department of Revenue~~ Kansas Bureau of Investigation Central Repository. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the Division and Kansas Bureau of Investigation, a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of the state.

(l) For the purpose of determining whether a conviction is a first, or second, in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state, or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal

proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) ~~Any~~ Only convictions occurring ~~during a person's lifetime~~ on or after July 1, 2001 shall be taken into account when determining the sentence to be imposed for a first or second offender.

(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense.

(5) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or a state statute or ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(m) Suspension, restriction or suspension and restriction of the driving privileges of a person convicted of a violation of this section should be done in accordance with the provisions of K.S.A. 8-1014 and 8-1015, and amendments thereto.

(n) The court shall be authorized to order any person convicted of a violation of this section to pay restitution to any victim who has suffered loss due to the violation for which the person was convicted.

(o) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this

subsection, entering into a diversion agreement established pursuant to K.S.A. 12-4413 et seq. and amendments thereto, shall not constitute plea bargaining.

(p) The alternatives set out in subsections (a)(1), (2) and (3) of this section may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case of the fact finder.

(q) For the purpose of this section:

(1) 'Alcohol concentration' means the number of grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath;

(2) 'Imprisonment' includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the city council.

(3) 'Drug' includes toxic vapors.

(4) 'Toxic Vapors' are defined as including the following substances or products containing such substances: (a) Alcohols, including methyl, isopropyl, propyl or butyl; (b) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate; (c) acetone; (d) Benzene (e) Carbon tetrachloride; (f) Cyclohexane; (g) Freons, including freon 11 and freon 12; (h) Hexane; (i) Methyl ethyl ketone; (j) Methyl isobutyl ketone (k) Naptha; (l) Perchloroethylene; (m) Toluene; (n) Trichloroethane; and/or Xylene.

(r) Should any court declare any subsection, clause or provision of this section to be unconstitutional, such decision shall affect only such subsection, clause or provision so declared unconstitutional and shall not affect any other subsection, clause or provision of this section.

(s) ~~On or after July 1, 2006,~~ ¶The Municipal Court shall have jurisdiction over a violation of this section occurring prior to July 1, 2011, and on or after July 1, 2006, which is concurrent with the jurisdiction of the district court for violation of K.S.A. 8-1567, and amendments thereto, notwithstanding that the elements of this section are the same as the elements of K.S.A. 8-1567, and amendments thereto, that would constitute, and be punished as a felony.

~~(t) Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-sentence evaluation shall be made available, and shall be considered by the sentencing court."~~

SECTION2. Section 11.38.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Driving a commercial vehicle while under the influence of alcohol and/or drugs illegal—Penalty—Testing and reporting.

(a) No person shall operate any commercial motor vehicle, as defined in K.S.A. 8-2, 128, and amendments thereto, within the city while:

(1) ~~T~~the alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence,

as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .04 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within ~~two~~ three hours of the time of driving a commercial motor vehicle, is .04 or more; or

(3) committing a violation of **Section 11.38.150**, and amendments thereto.

(b) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months imprisonment or, in the court's discretion, one hundred hours of public service, and fined not less than ~~five~~ seven hundred fifty dollars nor more than one thousand dollars. The person convicted must serve at least forty-eight consecutive hours' imprisonment or one hundred hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. ~~In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both such education and treatment programs.~~

(c) On a second conviction of a violation of this section, a person shall be sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than one thousand two hundred fifty dollars (\$1,250.00) nor more than one thousand ~~five~~ seven hundred fifty dollars. The person convicted

must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of the each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of one hundred twenty hours of confinement. Such one hundred twenty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment. ~~As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and amendments thereto.~~ The person convicted, if placed under house arrest shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of one hundred twenty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the

boundaries of the offender's residence provided for in the house arrest agreement, shall not be counted as part of the one hundred twenty hours.

(1) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendment thereto. The person shall be required to follow any recommendations made by the provider after such evaluation, unless otherwise ordered by the court.

~~(d) The court shall report every conviction of a violation of this section to the Division of Motor Vehicles of the Department of Revenue of the state. Prior to sentencing under the provisions of this section, the court shall request and shall receive from said Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state.~~

(d) Any person convicted of a violation of this section who had one or more children under the age of fourteen years in the vehicle at the time of the offense shall have such persons' punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(e) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(f) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than ninety days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(g) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or any an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(h) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of the section, the court shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of

this state; and (2) Kansas Bureau of Investigation central repository all criminal history record information concerning such person.

(i) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of a law of another state or an ordinance of any city or resolution of any county, which prohibits the acts that this section prohibits'

(2) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third or subsequent offender; and

(3) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(j) For the purpose of this section:

(1) 'Alcohol concentration' means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) 'imprisonment' shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city; and

(3) 'drug' includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and amendments thereto.

~~(e)~~ For the purpose of this section, ~~'alcohol concentration' means the number of grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath.~~

~~(f)~~ (k) Whenever a law enforcement officer has reasonable ground to believe a person has been driving a commercial motor vehicle in violation of the provisions of this section, such officer shall follow the procedures for notice, testing, and certification of test refusal or results as set forth in K.S.A. 8-2, 145 and amendments thereto.

~~(g)~~ (l) It shall not be a defense that the person did not understand the notices required by this section.”

SECTION 3. Section 11/38.157 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Refusal to submit to a preliminary breath test—Penalty.

(a) A law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath, saliva, or both ~~to determine the alcohol concentration of the person's breath~~ if the officer has reasonable grounds to believe that the person: ~~(a)~~ (1) has alcohol in the person's body; ~~(b)~~ (2) has committed a traffic infraction; or ~~(c)~~ (3) has been involved in a vehicle accident or collision.

(b) At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3)

further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test.

(c) Refusal to take and complete the test as requested is a traffic infraction punishable by a fine not more than five hundred dollars. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

(d) Any preliminary screening of a person's breath shall be conducted with a device approved pursuant to K.S.A. 65-1,107 and amendments thereto. Any preliminary screening of a person's saliva shall be conducted with a device approved pursuant to Section 2, of 2010 House Substitute for Senate Bill No. 6."

SECTION 4. The originals of Sections 11.38.150, 11.38.155 and 11.38.157 and of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 5. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED

6/13/2011

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 11.38.150, 11.38.155 AND 11.38.157 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS ILLEGAL AND REPEALING THE ORIGINALS OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1 Section 11.38.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Driving under the influence of alcohol and/or drugs unlawful—

Penalty. (a) No person shall operate or attempt to operate any vehicle within the city while:

(1) The alcohol concentration in the person's blood or breath, as measured within ~~two~~ three hours of the time of operating or attempting to operate a vehicle is .08 or more;

(2) Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(3) The alcohol concentration in the person's blood or breath as shown by any competent evidence is .08 or more. For the purposes of this

section, "any competent evidence" includes (1) Alcohol concentration tests obtained from samples taken ~~two~~ three hours or more after the operation or attempted operation of a vehicle, and (2) readings obtained from a partial alcohol concentration test on a breath testing machine;

(4) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

~~(b) (6) No person shall operate or attempt to operate any vehicle within this city if~~ If the person is a habitual user of any narcotic, hypnotic, omnificent or stimulating drug.

~~(e) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of the state shall not constitute a defense against the charge.~~

~~(d)~~ (b) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months imprisonment or, in the court's discretion, one hundred hours of public service, and fined not less than ~~five~~ seven hundred fifty dollars nor more than one thousand dollars. The person convicted ~~must~~ shall serve at least forty-eight consecutive hours' imprisonment or one hundred hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the

person convicted under a house arrest program pursuant to section 249 of Chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment. ~~In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both such education and treatment programs.~~

(e) (c) On a second ~~or a subsequent~~ conviction ~~pursuant to section (s),~~ of a violation of this section, a person shall be sentenced to not less than ninety days nor more than one year imprisonment and fined not less than one thousand two hundred fifty dollars nor more than one thousand ~~five~~ seven hundred fifty dollars. The person convicted ~~must~~ shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment; provided, such work release program requires such person to return to confinement at the end of the each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of one hundred twenty hours of confinement. Such one hundred twenty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's

work day. The court may place the person convicted under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ Section 249 of Chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of one hundred twenty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the one hundred twenty hours. ~~As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and amendments thereto.~~

(d) On a third offense, unless such person has a prior conviction which occurred within the preceding ten years, not including any period of incarceration, the person convicted shall be sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than one thousand seven hundred fifty dollars nor more than two thousand five hundred. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least ninety days' imprisonment. The ninety days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours'

imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of two hundred forty hours of confinement. Such two hundred forty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to section 349 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours imprisonment, the person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of two hundred forty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the two hundred forty hours.

(e) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendations made by the provider after such evaluation, unless otherwise ordered by the court.

(f) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

~~(f)~~ (g) Any person convicted of violating this section who had one or more children under the age of fourteen years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

~~(g)~~ (h) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than ninety days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

~~(h)~~ (i) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to five dollars for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient

amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

~~(i)~~ (j) Except as provided in paragraph (4), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period of one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(1) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section;

(2) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

~~(A)~~ a. Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

~~(B)~~ b. Whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(3) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such imprisonment or immobilization.

(4) As used in this subsection, the convicted person's motor vehicle or vehicles shall not include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

~~(j) — Except as provided in paragraph (j)(2), in addition to any other penalty which may be imposed upon a second or subsequent conviction pursuant to section (s), the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees, or other immobilization costs.~~

~~(1) — Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.~~

~~(2) — As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the~~

~~lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.~~

(k) The court shall electronically report every plea of guilty or conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the ~~Division of Motor Vehicles of the Kansas Department of Revenue~~ Kansas Bureau of Investigation Central Repository. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the Division and Kansas Bureau of Investigation, a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of the state.

(l) For the purpose of determining whether a conviction is a first, or second, in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state, or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal

proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) ~~Any~~ Only convictions occurring ~~during a person's lifetime~~ on or after July 1, 2001 shall be taken into account when determining the sentence to be imposed for a first or second offender.

(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense.

(5) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or a state statute or ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(m) Suspension, restriction or suspension and restriction of the driving privileges of a person convicted of a violation of this section should be done in accordance with the provisions of K.S.A. 8-1014 and 8-1015, and amendments thereto.

(n) The court shall be authorized to order any person convicted of a violation of this section to pay restitution to any victim who has suffered loss due to the violation for which the person was convicted.

(o) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this

subsection, entering into a diversion agreement established pursuant to K.S.A. 12-4413 et seq. and amendments thereto, shall not constitute plea bargaining.

(p) The alternatives set out in subsections (a)(1), (2) and (3) of this section may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case of the fact finder.

(q) For the purpose of this section:

(1) 'Alcohol concentration' means the number of grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath;

(2) 'Imprisonment' includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the city council.

(3) 'Drug' includes toxic vapors.

(4) 'Toxic Vapors' are defined as including the following substances or products containing such substances: (a) Alcohols, including methyl, isopropyl, propyl or butyl; (b) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate; (c) acetone; (d) Benzene (e) Carbon tetrachloride; (f) Cyclohexane; (g) Freons, including freon 11 and freon 12; (h) Hexane; (i) Methyl ethyl ketone; (j) Methyl isobutyl ketone (k) Naptha; (l) Perchloroethylene; (m) Toluene; (n) Trichloroethane; and/or Xylene.

(r) Should any court declare any subsection, clause or provision of this section to be unconstitutional, such decision shall affect only such subsection, clause or provision so declared unconstitutional and shall not affect any other subsection, clause or provision of this section.

(s) ~~On or after July 1, 2006,~~ ¶The Municipal Court shall have jurisdiction over a violation of this section occurring prior to July 1, 2011, and on or after July 1, 2006, which is concurrent with the jurisdiction of the district court for violation of K.S.A. 8-1567, and amendments thereto, notwithstanding that the elements of this section are the same as the elements of K.S.A. 8-1567, and amendments thereto, that would constitute, and be punished as a felony.

~~(t) Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-sentence evaluation shall be made available, and shall be considered by the sentencing court."~~

SECTION2. Section 11.38.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Driving a commercial vehicle while under the influence of alcohol and/or drugs illegal—Penalty—Testing and reporting.

(a) No person shall operate any commercial motor vehicle, as defined in K.S.A. 8-2, 128, and amendments thereto, within the city while:

(1) ~~T~~he alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence,

as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .04 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within ~~two~~ three hours of the time of driving a commercial motor vehicle, is .04 or more; or

(3) committing a violation of **Section 11.38.150**, and amendments thereto.

(b) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months imprisonment or, in the court's discretion, one hundred hours of public service, and fined not less than ~~five~~ seven hundred fifty dollars nor more than one thousand dollars. The person convicted must serve at least forty-eight consecutive hours' imprisonment or one hundred hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. ~~In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both such education and treatment programs.~~

(c) On a second conviction of a violation of this section, a person shall be sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than one thousand two hundred fifty dollars (\$1,250.00) nor more than one thousand ~~five~~ seven hundred fifty dollars. The person convicted

must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of the each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of one hundred twenty hours of confinement. Such one hundred twenty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served forty-eight consecutive hours' imprisonment. ~~As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and amendments thereto.~~ The person convicted, if placed under house arrest shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of one hundred twenty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the

boundaries of the offender's residence provided for in the house arrest agreement, shall not be counted as part of the one hundred twenty hours.

(1) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendment thereto. The person shall be required to follow any recommendations made by the provider after such evaluation, unless otherwise ordered by the court.

~~(d) The court shall report every conviction of a violation of this section to the Division of Motor Vehicles of the Department of Revenue of the state. Prior to sentencing under the provisions of this section, the court shall request and shall receive from said Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state.~~

(d) Any person convicted of a violation of this section who had one or more children under the age of fourteen years in the vehicle at the time of the offense shall have such persons' punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(e) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(f) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than ninety days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(g) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or any an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(h) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of the section, the court shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of

this state; and (2) Kansas Bureau of Investigation central repository all criminal history record information concerning such person.

(i) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of a law of another state or an ordinance of any city or resolution of any county, which prohibits the acts that this section prohibits'

(2) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third or subsequent offender; and

(3) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(j) For the purpose of this section:

(1) 'Alcohol concentration' means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) 'imprisonment' shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city; and

(3) 'drug' includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and amendments thereto.

~~(e)~~ For the purpose of this section, ~~'alcohol concentration' means the number of grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath.~~

~~(f)~~ (k) Whenever a law enforcement officer has reasonable ground to believe a person has been driving a commercial motor vehicle in violation of the provisions of this section, such officer shall follow the procedures for notice, testing, and certification of test refusal or results as set forth in K.S.A. 8-2, 145 and amendments thereto.

~~(g)~~ (l) It shall not be a defense that the person did not understand the notices required by this section.”

SECTION 3. Section 11/38.157 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Refusal to submit to a preliminary breath test—Penalty.

(a) A law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath, saliva, or both ~~to determine the alcohol concentration of the person's breath~~ if the officer has reasonable grounds to believe that the person: ~~(a)~~ (1) has alcohol in the person's body; ~~(b)~~ (2) has committed a traffic infraction; or ~~(c)~~ (3) has been involved in a vehicle accident or collision.

(b) At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3)

further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test.

(c) Refusal to take and complete the test as requested is a traffic infraction punishable by a fine not more than five hundred dollars. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

(d) Any preliminary screening of a person's breath shall be conducted with a device approved pursuant to K.S.A. 65-1,107 and amendments thereto. Any preliminary screening of a person's saliva shall be conducted with a device approved pursuant to Section 2, of 2010 House Substitute for Senate Bill No. 6."

SECTION 4. The originals of Sections 11.38.150, 11.38.155 and 11.38.157 and of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 5. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

**City of Wichita
City Council Meeting
June 21, 2011**

TO: Wichita Airport Authority

SUBJECT: Air Capital Terminal 3 (ACT 3) Program and Parking Facilities Program
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Non-Consent)

Recommendation: Authorize moving forward with the programs and approve the program budgets.

Background: The current Capital Improvement Program of the City includes the ACT 3 program and the Parking Facilities program. In 2002, the Wichita Airport Authority (WAA) initiated a comprehensive master plan study of the current airline terminal at Wichita Mid-Continent Airport in order to determine the appropriate long-term strategy for the facilities. Consideration was given to various options, including whether the current terminal should be renovated, remodeled, and expanded, or if a new terminal should be constructed. Following extensive analysis and public involvement, a Terminal Area Plan was presented in a City Council workshop on September 14, 2004, and subsequently discussed at the WAA meeting on October 12, 2004. At that meeting, the WAA voted unanimously to move forward with the construction of a new replacement terminal facility. As a result of that decision, the following major City Council/WAA actions have taken place while proceeding forward with the programs:

- June 7, 2005: Contracted with DMJM Aviation (now AECOM) for Program Management
- June 27, 2006: Workshop on Conceptual Design of Terminal
- July 18, 2006: Contracted with HNTB Architecture for design and engineering
- October 24, 2006: Approved the Financial Capacity Analysis for the program presented by LeighFisher
- July 24, 2007: Held joint workshop with City Council, Airport Board, and Design Council to review Schematic Design of the terminal
- December 11, 2007: Parking financial feasibility workshop
- February 12, 2008: Parking study design recommendations presented in workshop
- March 4, 2008: Parking garage design options presented in workshop
- June 3, 2008: Approved Phase 1 of airfield terminal apron construction
- August 26, 2008: Joint workshop with City Council, Airport Board, and Design Council to review Design Development of the terminal
- October 7, 2008: Approved Phase 2 of airfield terminal apron construction
- July 7, 2009: Approved Mid-Continent Road and Utilities relocation
- September 15, 2009: Accepted a \$6.9 million grant from the TSA for baggage security screening system
- February 9, 2010: Approved application to FAA for Passenger Facility Charge (PFC) for the project; collection was implemented in October 2010
- October 5, 2010: Financial plan workshop; project placed on hold
- June 7, 2011: Workshop on Project and local economic indicators

Analysis: The current airline terminal was originally constructed in 1953, and has become functionally obsolete and expensive to operate. Walking distances to gates are excessive and only seven of the 12 concourse gates have passenger loading bridges. Adequate food, beverage and retail concessions are not located in the boarding gate areas where departing passengers spend the majority of their time. The facility cannot be expanded to meet the demands of additional gates, baggage claim, or concessions. The passenger security screening checkpoint has inadequate space to comply with Transportation Security Administration (TSA) guidelines, and the queuing area is located on an inclined ramp, which is a violation of current Americans with Disabilities Act (ADA) requirements. Numerous other portions of the building also do not comply with ADA rules. Checked baggage inspection facilities are not in compliance with current TSA guidelines. The building structure is not in compliance with numerous current day code requirements, and the mechanical, electrical and plumbing systems are obsolete and inefficient.

The new replacement terminal will feature shorter walks to the boarding gates, and all gates will have passenger loading bridges in order to keep customers out of the weather and to provide better accessibility for disabled patrons. There will be a spacious meeter/greeter area adjacent to displays depicting the history of aviation in Wichita. The appropriate balance of food, beverage and retail concession locations will be available on both sides of the security checkpoint. The entire facility will be Leadership in Energy and Environmental Design (LEED) certified for meeting energy efficiency guidelines. The new terminal will be operationally more efficient for passenger security screening, checked baggage security inspection, airline ticketing, and baggage claim. The facility will have the capability of being expanded in the future to meet customer demands for additional airline activities, ticketing, and baggage claim.

There will be a parking garage in close proximity to the new terminal. The parking garage will house the customer service counters and covered vehicle ready/return parking spaces for rental cars, as well as covered parking for the public. Terminal area surface parking lots will be reconfigured in order to provide better service for the public and employees, and improvements to the parking revenue control system and the exit plaza are planned.

At its September 20, 2010, meeting, the Wichita Airport Advisory Board (WAAB) voted to recommend that the programs move forward, and at its June 6, 2011, meeting, the WAAB reaffirmed its support of the programs.

Financial Considerations: The ACT 3 program budget is recommended to be set at \$160 million, and the Parking Facilities program budget is recommended to be set at \$40 million. To date, the ACT 3 budget has been approved for \$38,364,572, and funds have been expended on the following program elements:

- Architectural and engineering design; Program Management
- Environmental Assessments
- Airfield Terminal Apron Phases 1 and 2 construction
- Landside Utilities Phase 1
- Mid-Continent Drive relocation

Sources of funding for the programs will be from the following general areas:

- Airport System revenues, which includes terminal rentals, concession commissions, parking collections, lease revenues, and airline fees
- Airport Passenger Facility Charge (PFC)
- Airport Rental Car Customer Facilities Charge (CFC)
- Federal Aviation Administration (FAA) Aviation Trust Fund Airport Improvement Program (AIP) grants
- Transportation Security Administration grants
- Bond proceeds

- Airport cash

There are no local tax dollars, or City General Fund monies planned for the project. All costs will be paid by users of the Airport. Airport revenues will be used to make the General Obligation bond debt service payments.

A specific breakdown of the funding plan is shown below:

	ACT 3	PARKING
PROGRAM COSTS	\$160.0	\$40.0
Pay-as-you-go funds		
FAA grants (entitlements)	29.0	0.0
FAA grants (discretionary)	24.8	0.0
PFC pay-as-you-go	16.8	0.0
CFC pay-as-you-go	0.0	5.0
Airport cash	27.2	0.0
TSA grants	6.9	0.0
Total pay-as-you-go	\$104.7	\$5.0
Total bond proceeds*	\$55.3	\$35.0
TOTAL SOURCES	\$160.0	\$40.0
*Partially reimbursable by PFC and CFC collections	All costs in Millions	

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through infrastructure improvements that address the needs of passenger airline operations and enhance the customer experience for users of the Airport.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the Wichita Airport Authority authorize moving forward with the programs and approve the program budgets.

Attachments: None.

City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Petition for a Storm Water Drain in Stonebridge 2nd and 3rd Additions (north of 13th, east of 143rd Street East) (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the new petition.

Background: On May 10, 2011, the City Council approved a petition for a storm water drain in Stonebridge 2nd and 3rd Additions. An attempt to award a construction contract within the budget set by the petition was not successful. The developer has submitted a new petition with an increased budget. The signature on the petition represents 100% of the improvement district.

Analysis: The project will provide drainage improvements for a new residential development located north of 13th Street, east of 143rd Street East.

Financial Considerations: The existing petition totals \$309,000. The new petition totals \$416,000. The funding source is special assessments.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing drainage improvements required for a new residential development.

Legal Considerations: The Law Department has approved the petition and resolution as to form.

Recommendations/Actions: It is recommended that the City Council approve the new petition, adopt the resolution and authorize the necessary signatures.

Attachments: Petition and resolution.

First Published in the Wichita Eagle on June 24, 2011

RESOLUTION NO. 11-152

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER DRAIN NO. 371 (NORTH OF 13TH, EAST OF 143RD ST. EAST) 468-84734 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER DRAIN NO. 371 (NORTH OF 13TH, EAST OF 143RD ST. EAST) 468-84734 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 11-042, adopted on March 22, 2011 and Resolution No. 11-114 adopted on May 10, 2011 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to improve Storm Water Drain No. 371 (north of 13th, east of 143rd St. East) 468-84734.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be Four Hundred Sixteen Thousand Dollars (\$416,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

STONEBRIDGE 2ND ADDITION

Lots 16 through 19, Block A
Lots 1 through 23, Block B
Lots 5 through 25, Block D
Lots 6 through 8, Block E
Lots 1 through 8, Block F

STONEBRIDGE 3RD ADDITION

Lots 1 through 26, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis:

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 16 through 19, Block A, Lots 1 through 23, Block B, Lots 5 through 25, Block D, Lots 6 through 8, Block 3, and Lots 1 through 8, Block F, STONEBRIDGE 2ND ADDITION, shall each pay 1/85 of the total cost of the improvements, and Lots 1 through 26, Block A, STONEBRIDGE 3RD ADDITION, shall each pay 1/85 of the total of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of June, 2011.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF
DIRECTOR OF LAW

STORM WATER DRAIN PETITION
(PHASE 2)

RECEIVED

AM 14 '11

CITY CLERK OFFICE

2ND REVISION

SWD No. 371

Project No. 468-84734

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

SWD 371

468-84734

STONEBRIDGE 2ND ADDITION

Lots 16 through 19, Block A

Lots 1 through 23, Block B

Lots 5 through 25, Block D

Lots 6 through 8, Block E

Lots 1 through 8, Block F

STONEBRIDGE 3RD ADDITION

Lots 1 through 26, Block A

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

- (a) That there be constructed a storm water drainage system to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
- (b) That the estimated and probable cost of the improvements is Four Hundred Sixteen Thousand Dollars (\$416,000.00) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of one percent per month from and after May 1, 2011.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvements for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita

incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvements for which the improvement district is liable shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 16 through 19, Block A, Lots 1 through 23, Block B, Lots 5 through 25, Block D, Lots 6 through 8, Block E, and Lots 1 through 8, Block F, STONEBRIDGE 2ND ADDITION shall pay each pay 1/85 of the total cost of the improvements, and Lots 1 through 26, Block A, STONEBRIDGE 3RD ADDITION shall each pay 1/85 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

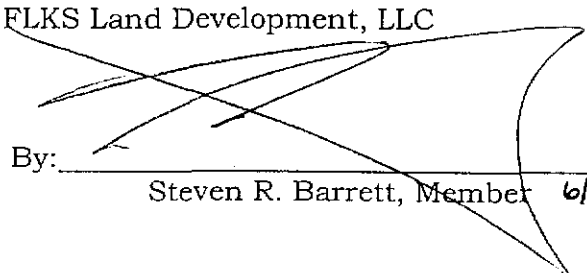
2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature to form one public improvement project.
- (b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment

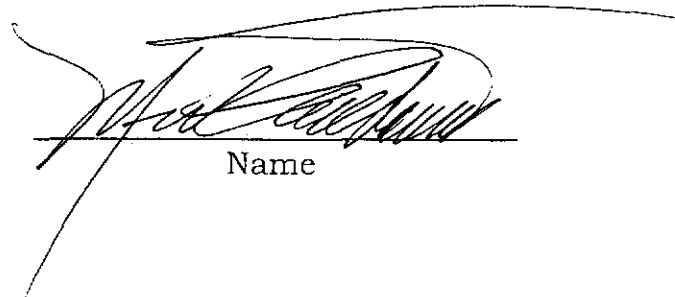
under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>STONEBRIDGE 2ND ADDITION</u> Lots 16 through 19, Block A Lots 1 through 23, Block B Lots 5 through 25, Block D Lots 6 through 8, Block E Lots 1 through 8, Block F	FLKS Land Development, LLC  By: _____	6/14/11
<u>STONEBRIDGE 3RD ADDITION</u> Lots 1 through 26, Block A		

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.


Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 14th day of June
2011.




Deputy City Clerk

City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Bradley Fair Summer Concert Series (District II)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter Cathy Erickson, Laham Development, Inc. is coordinating with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Bradley Fair Summer Concert Series June 30, 2011 5:00 p.m. until 11:00 p.m.

§ North Bradley Fair Parkway, East Wilson Estates Parkway to Saddle Creek Road

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

**City of Wichita
City Council Meeting
June 21, 2011**

TO: Mayor and City Council

SUBJECT: Design Supplemental Agreement No. 2 – I-235 Freeway at 13th Street Flyover (Districts V and VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve Supplemental Agreement No. 2.

Background: On March 10, 2009, the City Council approved the design concept and authorized the issuance of a request for proposal to provide consultant engineering services for a bridge across the Wichita-Valley Center Floodway connecting the I-235 By-pass to 13th Street. A contract with HNTB/PEC was executed on July 21, 2009, to begin engineering and conduct a required break-in-access study. On August 10, 2010, the City Council approved Supplement Agreement No. 1 for the preparation of construction plans in advance of the Federal approval for the break in access. Since that time, it has been determined that additional work is needed to comply with Federal requirements. In addition, in order to begin construction sooner, the project will be bid by the City of Wichita as three separate projects rather than one project. Supplemental Agreement No. 2 has been prepared to authorize the work.

Analysis: To expedite delivery of the project, additional work is required to create three sets of bid documents, one for the interchange, one for the relocation of Hoover, and one for improvements to the intersection of 13th and Ridge. Design was started on a fast track basis with the best scope available at the time. Additional work that was unknown at the beginning includes analysis of environmental impacts to obtain a categorical exclusion for the project, development of mitigation plans for the Kansas Department of Wildlife and Parks, and seepage analysis for the Army Corps of Engineers, to assure the integrity of the floodway levees impacted by the bridge.

Financial Considerations: The agreement fee for the break-in-access study is \$878,514. The supplemental agreement for project design is \$3,819,262. The fee for Supplemental No. 2 is \$521,369 for a total of \$5,219,145. Funding is available within the existing budget.

Goal Impact: The project addresses the Efficient Infrastructure goal by providing a vital connection from the I-235 By-Pass to west Wichita.

Legal Considerations: Supplemental Agreement No. 2 has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve Supplemental Agreement No. 2 and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 2.

SUPPLEMENTAL AGREEMENT #2
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES DATED JULY 21, 2009
BETWEEN
THE CITY OF WICHITA, KANSAS
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE
"CITY"
AND
HNTB CORPORATION
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated July 19, 2009) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to **I-235 FLOODWAY CROSSING** (Project No.472 84936, OCA.No. 770002)

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

I-235 FLOODWAY CROSSING
(Phase II – Plan Development)
(see Attachment "A")

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement is a cost plus, not to exceed \$521,369.

C. COMPLETION

The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY by _____;

EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions of inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

D. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2011.

CITY OF WICHITA

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

HNTB CORPORATION

(Name and Title)
VICE PRESIDENT

ATTEST:

I-235 Floodway Crossing
Fee Summary and Task Breakout
Supplement #2

Phase II - Engineering Design and Plan Development

Printed : 6/1/2011

Task Breakout: Manhours

FEE SUMMARY

Direct Labor	Manhours	Total
Task 2 - Roadway Design		
<i>Relocated Hoover</i>	1164	\$42,316
<i>13th/Ridge Intersection</i>	948	\$34,128
Task 3 - Drainage Design		
<i>Relocated Hoover</i>	282	\$9,804
<i>13th/Ridge Intersection</i>	400	\$13,757
Task 5 - Geotech Design		
<i>Seepage Analysis</i>	99	\$4,405
Task 7 - Traffic Engineering		
<i>Relocated Hoover</i>	46	\$1,602
<i>13th/Ridge Intersection</i>	89	\$3,501
Task 9 - Environmental Analysis		
<i>CE2 Document</i>	54	\$2,516
<i>Action Permit</i>	94	\$4,388
Task 11 - Project Coordination	354	\$20,048
TOTAL DIRECT LABOR	3,530	\$136,465

Subtotal Direct Labor and Overhead

3.0

\$409,395

Expenses	Amount
PEC	\$104,974
Printing/Plotting/Reproduction	\$5,000
Travel and Subsistence	\$2,000

SUBTOTAL EXPENSES:

\$111,974

TOTAL (Direct Labor, Overhead, and Expenses)**\$521,369**

SCOPE OF SERVICES

Supplement #2

I-235 Floodway Crossing
Wichita Project No. 472-84817

Supplement #2 consists of the following new scope tasks:

- Repackage of relocated Hoover Rd and the Ridge/13th St intersection. Both of these projects will have their own lettings and will be administered by the City of Wichita.
- Seepage Analysis as requested by the Corps of Engineers has been included.
- Documentation for CE 2 Report and Action Permit
- Value Engineering Memo

Assumptions for these projects include:

- HNTB will repackaging the plans per the City of Wichita's standards.
- HNTB will use the city of Wichita's title sheet and plan sheet border for all sheets for the relocated Hoover Rd and 13th/Ridge intersection projects.
- HNTB and PEC will coordinate with the ULCC to complete utility relocations for these projects.
- The 13th/Ridge Intersection project will consist of plans for a full depth concrete replacement of the intersection.
- Relocated Hoover Rd will be realigned so that right of way for the adjacent church will be minimized.
- There will be separate office check submittals and meetings for these two projects. HNTB proposes to hold conference calls for these milestones.
- Separate pre-bid and pre-construction meetings will also be held and added to HNTB's scope of services. Design services during construction are already a part of this scope.

Phase II – Plan Development

Task 2. Roadway Design

Hoover Rd Final Plans – New tasks

- 2.80 Utility coordination and support for relocated Hoover Rd. (Assumes 1 meeting with ULCC)
- 2.81 Permitting coordination and support for NPDES, NOI permits for relocated Hoover Rd project.
- 2.82 Develop gutter profiles on plan sheets (Wichita standard).
- 2.83 Develop curb elevations on plan sheets (Wichita standard).
- 2.84 Develop City Coordinate Geometry plan sheets.
- 2.85 Develop City Curve Stake-Out Tables plan sheets.
- 2.86 Apply standard roadway details for project. Task includes adding city of Wichita standards instead of using KDOT standards.
- 2.87 Revise grading and ditch between relocated Hoover Rd and I-235. I-235 grading and ditch information will be updated to show this portion of the project as completed.
- 2.88 Revise cross sections and cross section layout sheets for relocated Hoover Rd.
- 2.89 Develop earthwork calculations, borrow and balance calculations for relocated Hoover Rd.
- 2.90 Prepare quantity summary and tables for relocated Hoover Rd.
- 2.91 Prepare office check plans for relocated Hoover Rd, including adding City of Wichita's standard sheets, title sheet, sheet border for relocated Hoover.
- 2.92 Perform quality review of relocated Hoover Rd office check set.
- 2.93 Submit office check plans of relocated Hoover Rd.
- 2.94 Participate in office check meeting via conference call with City of Wichita.
- 2.95 Update plans from comments on office check set.
- 2.96 Prepare final quantities and bid item list.
- 2.97 Prepare special provisions.
- 2.98 Prepare Final Engineer's Estimate.
- 2.99 Submit Final plans to the City of Wichita.
- 2.100 Prepare electronic deliverables.
- 2.101 Attend pre-bid meeting.
- 2.102 Attend pre-construction meeting.

Revised Alignment of Hoover – New tasks

- 2.103 Design horizontal and vertical alignments for relocated Hoover Rd.
- 2.104 Prepare and finalize plan and profile sheets.
- 2.105 Update intersection designs along Hoover Rd.
- 2.106 Revise entrance profiles along Hoover Rd per City standards.
- 2.107 Design curb returns for the intersection and entrances along Hoover Rd per City standards.
- 2.108 Revise and coordinate special ditches and drainage structures.
- 2.109 Model footprint of intersection to determine limits of construction.
- 2.110 Delineate Right of Way and Easements, Tract Maps & Legal Description Coordination with PEC.
- 2.111 Update Right of Way plans and strip map.

13th St/Ridge Intersection Final Plans – New Task.

- 2.112 Utility coordination and support for 13th/Ridge intersection. (Assumes 1 meeting with ULCC)
- 2.113 Prepare typical section for full depth concrete replacement.
- 2.114 Develop gutter profiles on plan sheets (Wichita standard).
- 2.115 Develop curb elevations on plan sheets (Wichita standard).
- 2.116 Develop city coordinate geometry plan sheets per city standards.
- 2.117 Develop city curve state-out table plan sheets per city standards.
- 2.118 Apply standard roadway details for project. Task includes adding city of Wichita standards instead of using KDOT standards.
- 2.119 Design and develop geometry, plans, and details for new entrances and sideroads (Assumes 11 entrances and 4 sideroads).
- 2.120 Prepare plans for a full depth concrete reconstructed intersection.
- 2.121 Prepare joint layout plans and details.
- 2.122 Update right of way plans for additional right of way needs and/or easements as needed.
- 2.123 Revise cross sections and cross section layout for intersection.
- 2.124 Prepare earthwork calculations including borrow and balance notes.
- 2.125 Prepare quantity summaries and recap tables for intersection.
- 2.126 Prepare office check plans with City of Wichita borders for submittal and review.
- 2.127 Perform quality review of 13th/Ridge intersection office check set.
- 2.128 Submit office check plans for 13th/Ridge intersection.
- 2.129 Participate in office check meeting via conference call with City of Wichita.

- 2.130 Update plans from comments on office check set.
- 2.131 Prepare final quantities and bid item list.
- 2.132 Prepare special provisions.
- 2.133 Prepare Final Engineer's Estimate.
- 2.134 Submit Final plans to the City of Wichita.
- 2.135 Prepare electronic deliverables.
- 2.136 Attend pre-bid meeting.
- 2.137 Attend pre-construction meeting.

Task 3. Drainage Design

Office Check – Hoover Rd project – New Tasks

- 3.38 Final updates of the drainage area maps.
- 3.39 Office check updates for cross road pipes along relocated Hoover.
- 3.40 Update inlet/flume layout based on Field check comments and final check of spread and inlet capacity.
- 3.41 Final design of all outlet protection (assumes no energy dissipation design.)
- 3.42 Final ditch capacity check and review.
- 3.43 Prepare temporary drainage for relocated Hoover Rd.
- 3.44 Prepare and develop Wichita design tables for drainage to the plan set.
- 3.45 Insert and edit Wichita standard details as required.
- 3.46 Prepare and submit NPDES/NOI permit applications.
- 3.47 Determine drainage related quantities and cost estimates for office check review. Review Wichita specs for bid item conformance.
- 3.48 Perform quality review of office check drainage plans.
- 3.49 Attend office check meeting via conference call.
- 3.50 Update office check plans per comments from office check meeting.
- 3.51 Attend pre-bid and pre-construction meetings for relocated Hoover Rd project.

Office Check – 13th/Ridge Intersection project – New Tasks

- 3.52 Prepare final updates of the drainage area maps.
- 3.53 Office check enclosed pipe systems assuming design of approximately 23 structures and the 60" RCP remains in place. Complete final capacity analysis and HGL checks for new inlet structures.
- 3.54 Prepare temporary drainage for intersection.
- 3.55 Prepare and develop Wichita design tables for drainage to the plan set.
- 3.56 Insert and edit Wichita standard details as required.
- 3.57 Prepare and submit NPDES/NOI permit applications.

- 3.58 Determine drainage related quantities and cost estimates for office check review. Review Wichita specs for bid item conformance.
- 3.59 Perform quality review of office check drainage plans.
- 3.60 Attend office check meeting via conference call.
- 3.61 Update office check plans per comments from office check meeting.
- 3.62 Attend pre-bid and pre-construction meetings for 13th/Ridge intersection project.
- 3.63 Review drainage shop drawings (assumes 15 additional structures with full depth replacement project).

Task 5. Geotechnical Design

Seepage Analysis – New Task

- 5.14 Develop subsurface investigation program including survey coordinates for field location of borings.
- 5.15 Coordination of subsurface investigation program.
- 5.16 Field monitoring of additional borings including logging of borings.
- 5.17 Develop final boring logs.
- 5.18 Review borings, assign and review laboratory testing.
- 5.19 Perform engineering seepage analysis with Seep/W.
- 5.20 Prepare geology and geotechnical report for seepage analysis.
- 5.21 Perform oversight and review of report.
- 5.22 Perform quality review of seepage analysis report.

Task 7. Traffic Engineering

Hoover Rd Final Plans – New Tasks

- 7.7 Develop signing plans, details, and quantities for relocated Hoover Rd per City of Wichita's standards.
- 7.8 Develop traffic control plans, details and quantities for relocated Hoover Rd per City of Wichita's standards.

13th/Ridge Intersection Final Plans – New Tasks

- 7.9 Develop striping plans, details and quantities for 13th/Ridge intersection per City of Wichita's standards.
- 7.10 Develop signing plans, details, and quantities for 13th/Ridge intersection per City of Wichita's standards.
- 7.11 Develop traffic control plans, details and quantities for 13th/Ridge intersection per City of Wichita's standards.

Task 9. Environmental Analysis**CE2 Documentation & Additional Analysis – New Tasks**

- 9.23 Completion of noise study; text and exhibits
- 9.24 Update KDOT environmental review text.
- 9.25 Perform analysis of additional factors, including summary of Noise Study, Displacements, Land Use Planning, Environmental Justice and Social/Economic.
- 9.26 Prepare text for additional environmental factors.
- 9.27 Develop and compile text and exhibits for Appendix of CE2.
- 9.28 Prepare and send .pdf submittal to City of Wichita and FHWA of CE2 document.
- 9.29 Additional coordination with FHWA and KDOT on the CE2 document.
- 9.30 Perform quality review of CE2 document.

Action Permit for KDWP – New Tasks

- 9.31 Prepare exhibits for submittal to KDWP
- 9.32 Prepare permit application and submit to KDWP.
- 9.33 Prepare for coordinated site visit with KDWP.
- 9.34 Attend site visit and prepare meeting minutes. (2 persons for site visit)
- 9.35 Develop mitigation plans and specifications for Action Permit.
- 9.36 Continue ongoing coordination with KDWP/USFWS, City of Wichita, KDOT and FHWA.
- 9.37 Perform quality review of Action Permit.

Task 11. Project Coordination**11.1 Project Management**

Provide general project management, supervision and coordination of HNTB team activities. Provide general project management for relocated Hoover Rd and 13th/Ridge intersection projects.

11.2 Monthly Project Meetings

Prepare for and document meetings with design team, KDOT, Federal Highway Administration and City of Wichita.

11.3 Quality Assurance/Subconsultant Coordination

Provide and monitor project quality control plan for engineering services and coordination with PEC. Provide quality assurance for relocated Hoover Rd and 13th/Ridge intersection projects.

11.4 Project Reporting

Prepare monthly progress reports, including financial status of project and invoices for engineering services.

11.5 **Value Engineering Memo – New Task**

Provide the City with a Value Engineering memo of the project to meet FHWA's requirement for a project over \$25 million.

PROJECT DELIVERABLES

Deliverables Provided by HNTB Corporation

To be provided by PEC

- Survey
- Utility Coordination (ULCC)
- Right of Way Legal Descriptions and Tract Maps
- Geotechnical Drilling and Testing
- Floodway Drainage Study
- Permitting (404 permit, DWR permits)
- Retaining Wall Typical Sections and Layouts and Bridge Quality Review

Traffic

- Design Support Technical Memorandum (Ten Printed and one Electronic copy)
- Transportation Management Plan (Ten Printed and one Electronic copy)

Final Plans

1. Additional Survey Notes (to be provided by PEC)
2. Quantities & Cost Estimate
3. Plan Deliverables (I-235/13th St Interchange Project)
 - Title Sheet
 - Typical Sections
 - Plan & Profile Sheets (edges of pavement, construction limits, crossroad culverts)
 - Interchange Layout sheets
 - Intersection Layout Sheets
 - Standard Details (concrete safety barrier, guardrail)
 - Drainage Plans, Profiles, and Details
 - Bridge Plans
 - Retaining Wall Layouts
 - Noise Wall Layouts
 - Sidewalk Plans and Details
 - Construction Sequencing Plans, Typicals, and Layouts

- Erosion Control Plans and Details
- Seeding Plans and Details
- Fencing Plans and Details
- Gore Detail Sheets
- Joint Layout Sheets
- Curb Return Sheets
- Pavement Marking Sheets
- Signing Sheets
- Lighting Sheets
- Traffic Signal Plans
- Landscaping Plans
- Special Job Provisions
- Cross Sections

4. Plan Deliverables (Relocated Hoover Rd Project) – New Tasks

- Title Sheet
- Typical Sections
- Plan & Profile Sheets (edges of pavement, construction limits, crossroad culverts)
- Intersection Layout Sheets
- Standard Details
- Drainage Plans, Profiles, and Details
- Construction Sequencing Plans, Typicals, and Layouts
- Erosion Control Plans and Details
- Seeding Plans and Details
- Fencing Plans and Details
- Joint Layout Sheets
- Curb Return Sheets
- Entrance profiles
- Pavement Marking Sheets, as required
- Signing Sheets
- Lighting Sheets
- Special Job Provisions
- Cross Sections

5. Plan Deliverables (13th/Ridge Intersection Project) – New Tasks

- Title Sheet
- Typical Sections

- Plan & Profile Sheets (edges of pavement, construction limits, crossroad culverts)
- Intersection Layout Sheets
- Standard Details
- Drainage Plans, Profiles, and Details
- Sidewalk Plans and Details
- Construction Sequencing Plans, Typical, and Layouts
- Erosion Control Plans and Details
- Seeding Plans and Details
- Joint Layout Sheets
- Curb Return Sheets
- Pavement Marking Sheets
- Signing Sheets
- Lighting Sheets
- Traffic Signal Plans
- Special Job Provisions
- Cross Sections

6. Bid Documents

- 6.1 Special Job Provisions
- 6.2 Specifications

Design Services during Construction

1. Deliverables

- Bridge Live Load Ratings
- Bridge data for SI&A sheets
- Initial bridge maintenance inspection report
- Roadway/Drainage Shop Drawing Reviews

Deliverables Provided by the City of Wichita and/or KDOT

- As-Built Information (Roadway and Bridges), including cross sections and geology data.
- KDOT Standard Drawings.
- Right of Entry onto private property for surveys if negotiations with property owners are unsuccessful.

LicenseNo PaymentStatus

16884 Paid thru 6/9/11

17565 Paid thru 3/30/11

18146 Paid thru 7/20/11

18149 Paid thru 7/21/11

18164 Paid thru 7/29/11

20510 Paid thru 8/19/11

20653 Paid thru 10/4/11

20969 Paid thru 3/9/11

23956 Paid thru 6/22/11

23955 Paid thru 6/22/11

25814 Paid thru 4/22/11

25986 Paid thru 6/12/11

30565 Paid thru 8/23/11

City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Agreement for Design Services for Paving, Water, Storm Water Drain, and Sanitary Sewer Improvements in Reeds Cove Medical Campus Addition (east of 127th Street East, south of 21st) (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On June 14, 2011, the City Council approved petitions for paving, water, storm water drain, and sanitary sewer improvements in Reeds Cove Medical Campus Addition.

Analysis: The proposed agreement between the City and Ruggles & Bohm, P.A. provides for the design of the improvements. In accordance with Administrative Regulation 1.10, staff recommends that Ruggles & Bohm, P.A. be hired for this work, as this firm provided the preliminary engineering services for the platting of the new commercial development and can expedite plan preparation.

Financial Considerations: Payment to Ruggles & Bohm, P.A. will be on a lump sum basis of \$36,900 and will be paid by special assessments.

Goal Impact: This agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of public improvements in a new commercial development.

Legal Considerations: The agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

RUGGLES & BOHM, P.A.

for

REEDS COVE MEDICAL CAMPUS ADDITION

THIS AGREEMENT, made this _____ day of _____, 2011, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and RUGGLES & BOHM., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90527 serving Lots 1 through 5, Block 1, Reeds Cove Medical Campus Addition (east of 127th Street East, south of 21st) (Project No. 448-90527).

LATERAL 10, MAIN 14, FOUR MILE CREEK SEWER serving Lots 1 through 5, Block 1, Reeds Cove Medical Campus Addition (east of 127th Street East, south of 21st) (Project No. 468-84764).

STORM WATER DRAIN NO. 377 serving Lots 1 through 5, Block 1, Reeds Cove Medical Campus Addition (east of 127th Street East, south of 21st) (Project No. 468-84765).

127th STREET COURT EAST, from the east line of 127th Street East, east to and including **CUL-DE-SAC**. Reeds Cove Medical Campus Addition, (east of 127th Street East, south of 21st) (Project No. 472-84998).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Reeds Cove Medical Campus Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

- Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.
- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project

Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90527	\$ _____
Project No. 468 84764	\$ _____
Project No. 468 84765	\$ _____
Project No. 472 84998	\$ _____
TOTAL	\$ _____

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

RUGGLES & BOHM, P.A.

Christopher M. Bohm, President

ATTEST:

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way and easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
 - a. Plan Development for the water improvements by _____.
(Project No. 448 90527).
 - b. Plan Development for the sewer improvements by _____.
(Project No. 468 84764).
 - c. Plan Development for the storm water improvements by _____.
(Project No. 468 84765).
 - d. Plan Development for the paving improvements by _____.
(Project No. 472 84998).

Attachment No. 1 to Exhibit “A” – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 2 – Harry and Rock Intersection Improvement (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On December 7, 2010, the City Council approved a contract with Lafarge North America, Inc. for improvements to the intersection of Harry and Rock. Part of the work is a mill and overlay of existing asphalt pavement. The milling exposed base pavement that is in very poor condition. Core samples were taken and confirmed that approximately 30% of the existing base pavement is failing and will not support a surface overlay for more than a few years. A value engineering analysis was conducted and determined that it would be more effective to do complete removal and replacement of the pavement. A change order has been prepared for the additional work.

Analysis: The additional work consists of removing approximately 2,050 square yards of existing pavement and replacing it with new pavement on a crushed rock base.

Financial Considerations: The total cost of the additional work is \$56,783 with \$45,426 paid by federal transportation funds and \$11,357 by City General Obligation Bonds. The original contract amount is \$3,277,464. This change order plus a previous change order represents 1.73% of the original contract amount. Funding is available within the existing project budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through an important transportation corridor.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve Change Order No. 2 and authorize the necessary signatures.

Attachments: Change Order No. 2.



June 21, 2011

PUBLIC WORKS-ENGINEERING

CHANGE ORDER

To: Lafarge North America, Inc.

Change Order No.: 2

Purchase Order No.: 031074

CHARGE TO OCA No.: 706969=\$56,783.35

Project: Harry & Rock Intersection

Project No.: 87N-0354-01_472-84577

OCA No.: 706969/633819

PPN: 207435/750175

Please perform the following extra work at a cost not to exceed **\$56,783.35**

Additional Work:

Change Milled and Overlay Area from Station 0+73 to 4+93 to complete pavement removal and replacement with Crushed Rock Base and new AC Pavement.

Reason for Additional Work:

After milling a portion of the proposed mill and overlay area between Station 0+73 to 4+93 the existing base pavement exposed was in very poor and deteriorated condition. Pavement cores were taken to confirm base asphalt condition and it was estimated that approximately 30% of the exiting base pavement was failing and would not have supported a surface overly for more than a few years without failures. Value engineering was applied and it was determined to be more expensive to complete the mill and overlay with base repairs and less expensive to do complete removal and replacement of the pavement with a new crushed rock base.

Item	Negot'd/Bid	Qty	Unit Price	Extension
Paving Items (Participating) (70696)				
#7 Removal of Exist. Pvmt (Asph.)	Bid	2050 SY @	\$4.00=	\$8,200.00
#9 Excavation	Bid	285 CY @	\$9.45=	\$2,693.25
#14 AC Pvmt (7'')(5"Bit Base)(Bm-2)(PG70-28)	Bid	2050 SY @	\$21.50=	\$44,075.00
#15 Rein Crushed Rock Base (8'')(incl Geogrid Rinf)	Bid	2050 SY @	\$9.75=	\$19,987.50
#65 Milling (2" Nominal)	Bid	(1003 SY) @	\$3.30=	(\$3,309.90)
#66 Surface (2" Min)(BM-2)(PG70-28)	Bid	(2050 SY) @	\$7.25=	(\$14,862.50)
Total =				\$56,783.35

CIP Budget Amount: \$7,540,740.00

Original Contract Amt.: \$3,277,463.54

Consultant: Baughman

Current CO Amt.: \$56,783.35

Exp. & Encum. To Date: \$3,590,702.12

Amt. of Previous CO's: \$0.00

CO Amount: \$56,783.35

Total of All CO's: \$56,783.35

Unencum. Bal. After CO: \$3,893,254.53

% of Orig. Contract / 25% Max.: 1.73%

Adjusted Contract Amt.: \$3,334,246.89

Recommended By:

Approved:

Greg Baalman, P.E.
Construction Engineer

Date

Jim Armour, P.E.
City Engineer
Co-Director of Public Works & Utilities

Date

Approved:

By Order of the City Council:

Contractor

Date

Carl Brewer
Mayor

Date

Approved as to Form:

Gary Rebenstorf
Director of Law

Date

Attest: _____
City Clerk

CITY OF WICHITA
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 3217 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system, and landscaping. Due to the proposed realignment, the project requires right-of-way adjacent to the existing right-of-way from the vacant land parcel located at 3217 East 13th Street. The twenty foot wide strip of land consists of 1,807 square feet. A five foot wide temporary construction easement is also required.

Analysis: The owner rejected the estimated appraised offer of \$1,000. After negotiation, the owner agreed to a purchase price of \$3,000. There is a mature tree located right on the new right-of-way line which will most likely be impacted as a result of the project. The City will endeavor to save the tree; however, significant damage to the root system could cause the tree to be removed. In addition, a retaining wall will be removed as a result of the project and not reinstalled. The grading will be sufficient to not require a new wall. The increased amount is for damages to the wall and mature tree.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$3,250 is requested. This includes \$3,000 for the acquisition, \$250 for title work, and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement; 2) Approve the budget and; 3) Authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial map.

PROJECT: 13th Street North DATE: May 9, 2011
COUNTY: Sedgwick TRACT NO.: 68

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this _____ day of _____, 2011, by and between

Linda and Willie L. Kendrick

1521 Siefkin, Wichita, Kansas 67208-2415

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

A tract of land in Lots 2,4,6,8,10 & 12, Baldock's Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

All of the North 20.00 feet of the West 45 feet of the East 75 feet of Lot 2 as platted in Baldock's Addition. AND all of the North 20 feet of the East 30 feet of Lot 2 as platted in Baldock's Addition. AND all of the North 20 feet of the West 15 feet of vacated Holyoke Avenue adjoining the East line of Lot 2 in Baldock's Addition.

Together with a temporary construction easement (~~3 years~~ ^{*work completed w/p*}) on the following describe property.

A tract of land in Lots 2,4,6,8,10 & 12, Baldock's Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

All of the West 45 feet of the East 75 feet of Lot 2 except the north 20 feet thereof, as platted in Baldock's Addition. AND all of the east 30 feet of Lot 2 except the north 20 feet thereof, as platted in Baldock's Addition. AND all of the west 15 feet of vacated Holyoke Avenue adjoining the East line of Lot 2 except the north 20 feet thereof, in Baldock's Addition. All of the north 5.00 feet of the west 45 feet of the east 75 feet of Lot 4 as platted in Baldock's Addition. AND all of the north 5.00 feet of the east 30 feet of Lot 4 as platted in Baldock's Addition. AND all of the north 5.00 feet of the west 15.00 feet of vacated Holyoke Avenue adjoining the east line of Lot 4 in Baldock's Addition.

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or

claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 1,807 Sq. Ft. for Right of Way
Plus the above described temporary
easement and any damages to the subject
property.

\$ 3,000.00

TOTAL: \$ 3,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:
Willie L. Kendrick

Linda Kendrick

By: Willie L. Kendrick

By: Linda L. Kendrick

THE CITY OF WICHITA

ATTEST:

By: _____
Carl Brewer, Mayor

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Linda Kendrick

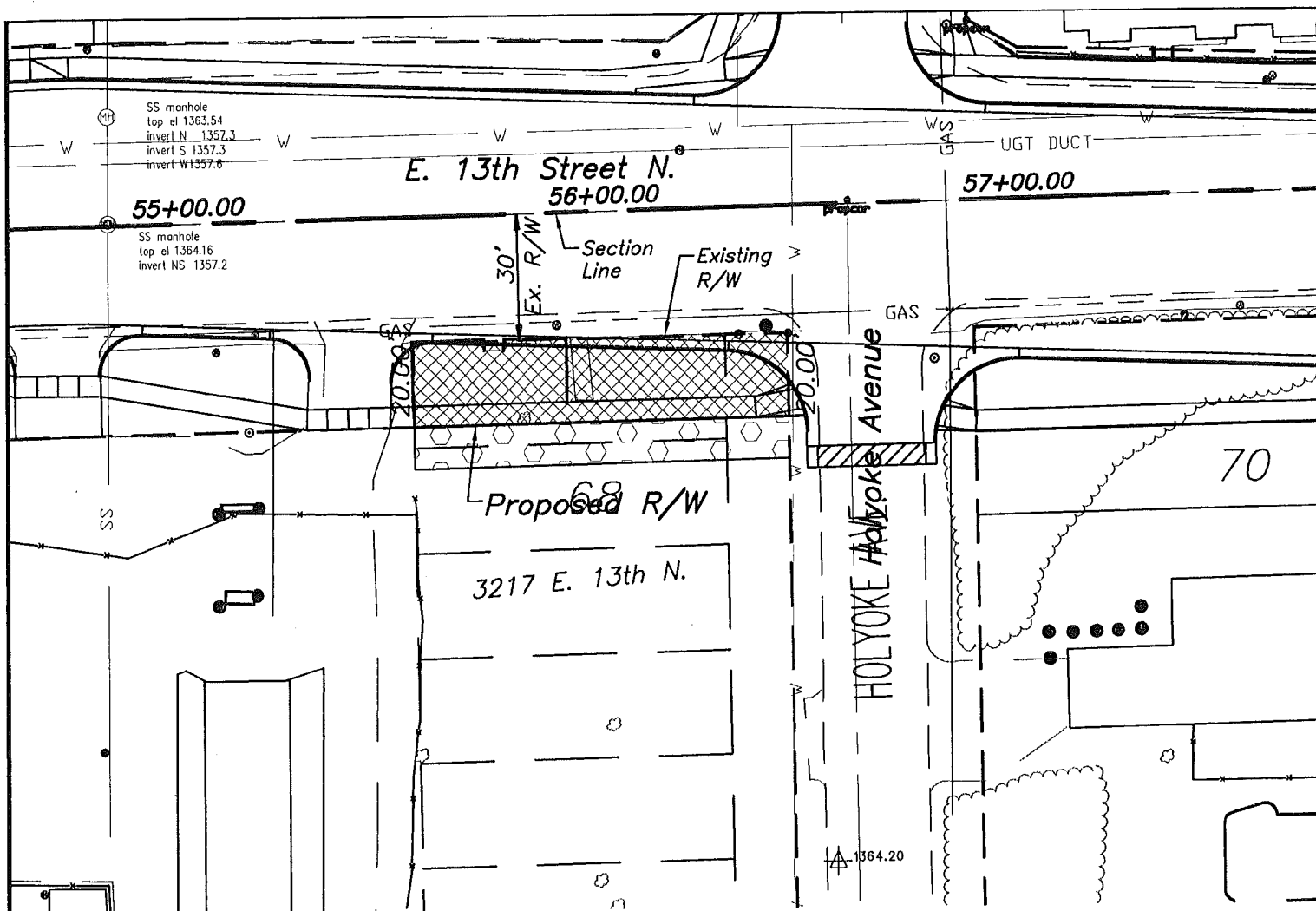
If mortgage or other liens, show names of holders:

REMARKS:

PIN/APN

APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law



PROPOSED R/W ACQ. LEGAL:

A tract of land in Lots 2,4,6,8,10 & 12, Baldock's Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

All of the North 20.00 feet of the West 45 feet of the East 75 feet of Lot 2 as platted in Baldock's Addition. AND all of the North 20 feet of the East 30 feet of Lot 2 as platted in Baldock's Addition. AND all of the North 20 feet of the West 15 feet of vacated Holyoke Avenue adjoining the East line of Lot 2 in Baldock's Addition.

TAX KEY #: C04484, C04483

R/W ACQUISITION SIZE: 1,807 sq. ft.



PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER
TRACT MAP

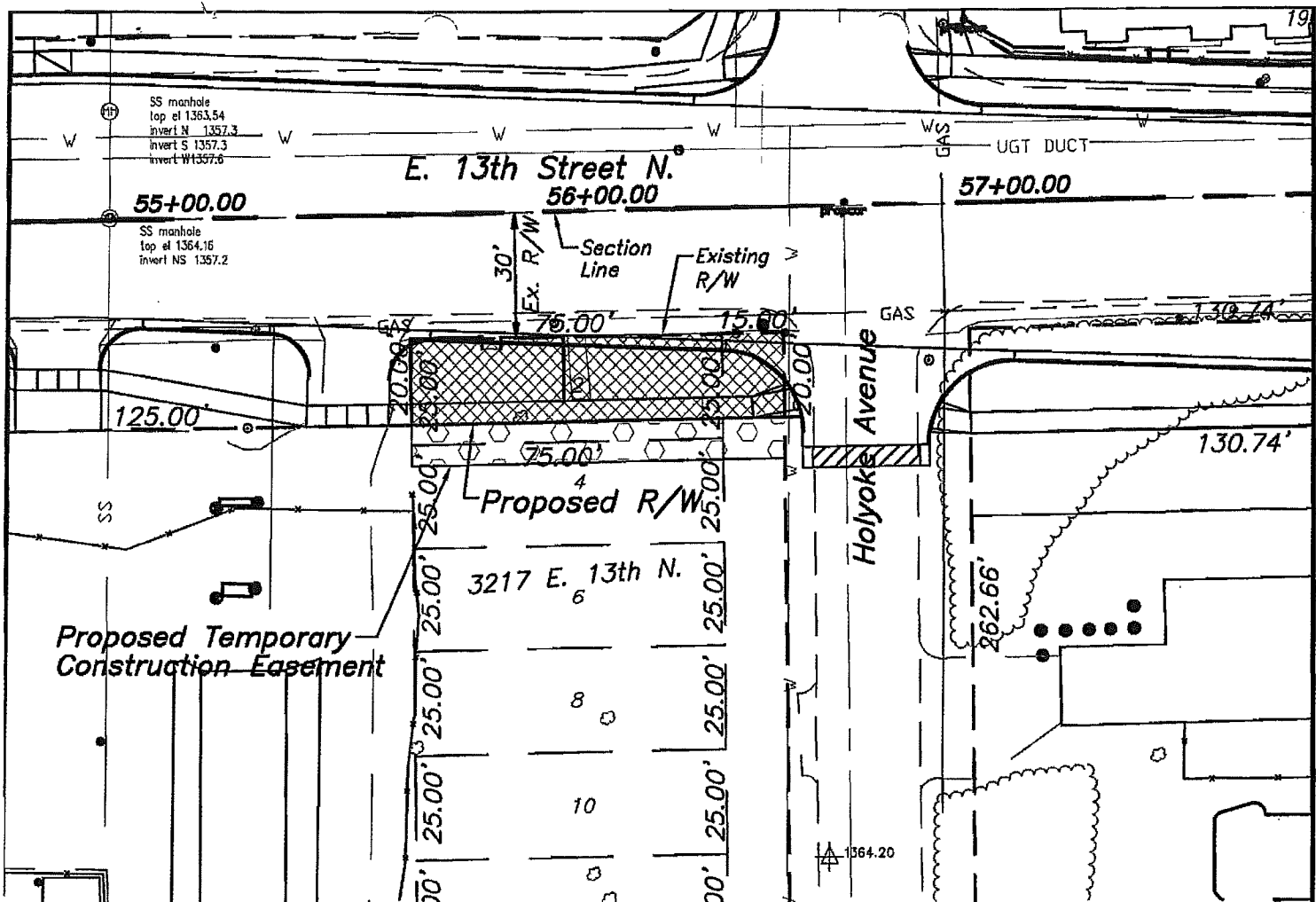
LINDA KENDRICK
CFO 11 107 015

151



SCALE: 1" = 40'

Tract No. 68



PROPOSED TEMPORARY CONSTRUCTION EASEMENT ACQ. LEGAL:

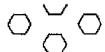
A tract of land in Lots 2,4,6,8,10 & 12, Baldock's Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

All of the West 45 feet of the East 75 feet of Lot 2 except the north 20 feet thereof, as platted in Baldock's Addition. AND all of the East 30 feet of Lot 2 except the north 20 feet thereof, as platted in Baldock's Addition. AND all of the West 15 feet of vacated Holyoke Avenue adjoining the East line of Lot 2 except the north 20 feet thereof, in Baldock's Addition. All of the north 5.00 feet of the West 45 feet of the East 75 feet of Lot 4 as platted in Baldock's Addition. AND all of the north 5 feet of the East 30 feet of Lot 4 as platted in Baldock's Addition. AND all of the north 5 feet of the West 15 feet of vacated Holyoke Avenue adjoining the East line of Lot 4 in Baldock's Addition.

TAX KEY #: C04484, C04483



R/W ACQUISITION



TEMPORARY CONSTRUCTION EASEMENT ACQUISITION SIZE: 900 sq. ft.

PROPOSED TEMPORARY CONSTRUCTION EASEMENT ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER
TRACT MAP

LINDA KENDRICK
SEC 14-T27-R1F

SCALE: 1" = 40'

Tract No. 68

3217 East 13th Street North



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Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 3150 South Seneca for the Seneca, 31st Street South to Interstate 235 Road Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On April 6, 2010, the City Council approved the design concept and the funding to acquire right-of-way for the Seneca Street improvement project between 31st Street South and Interstate 235. The roadway will be widened to five lanes with four through lanes and a center, two-way turn lane. There will be new sidewalks on each side of Seneca. The traffic signals and the drainage system will be upgraded during construction. A property at the northeast corner of Seneca and 31st Street South, also known as 3150 South Seneca, is impacted by the project. The site is improved as a standalone retail center however, only landscaping will be impacted as a result of the acquisition. The proposed acquisition area is a triangular shaped parcel at the intersection and consists of 72 square feet. Temporary easements during construction will be required at both entrances to the subject property and these easements consist of a combined 200 square feet.

Analysis: The owner rejected the estimated appraised value of the proposed acquisition at \$880, or \$10 per square foot for the acquisition and, \$0.80 per square foot for the temporary easements. The owner did agree to convey the acquisition and temporary easement for a sum of \$1,200, or \$14 per square foot for the land, and, the appraised value of the temporary easement at \$0.80 per square foot. The land value matches the amount the seller paid for the site when it was acquired. Compensation to relocate the impacted sprinkler system shall be handled as a relocation item. The estimate to remove and relocate the sprinklers is \$6,240. The total cost of the acquisition is \$7,440 and is reasonable and prudent.

Financial Considerations: The funding source is General Obligations Bonds. A budget of \$8,190 is requested. This includes \$7,440 for the acquisition and \$750 for closing costs and related charges.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the purchase agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the purchase agreement; 2) Approve the budget; and 3) Authorize the necessary signatures.

Attachments: Aerial map, tract maps and real estate purchase agreement.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2011 by and between Walgreen Co., an Illinois Corporation, party of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a Limited Warranty Deed the following described real property, situated in Sedgwick County, Kansas, to-wit:

A tract of land lying in the Southwest Quarter, Section 5, Township 28 South, Range 1 East of the 6th P.M., Wichita, Sedgwick County, Kansas, more particularly described as follows:

A triangular tract of land located in the Southwest Corner of Lot 2, Chester Miller Addition, an addition to Wichita, Sedgwick County, KS. More particularly described as follows; Beginning at the Southwest corner of said Lot 2; thence north 12 feet along the west line of said Lot 2; thence Southeast to a point on the south line of said Lot 2, said point being 12 feet east of the said Southwest corner of said Lot 2; thence west along said south line to the point of beginning.

2. The Seller does hereby agree to convey to the Buyer by a Temporary Easement for construction, the following described real property, situated in Sedgwick County, Kansas, to-wit:

A tract of land lying in the Southwest Quarter, Section 5, Township 28 South, Range 1 East of the 6th P.M., Wichita, Sedgwick County, Kansas, more particularly described as follows:

The south 5 feet of the west 25 feet of the east 50 feet of Lot 1, Brentari Addition, Wichita, Sedgwick County, Kansas.

together with:

A tract of land lying in the Southwest Quarter, Section 5, Township 28 South, Range 1 East of the 6th P.M., Wichita, Sedgwick County, Kansas, more particularly described as follows:

The north 5 feet of the west 15 feet of Lot 1, Chester Miller Addition, Wichita, Sedgwick County, Kansas.

Said Temporary Easement shall expire upon completion of Project Number 87-N-0243-01: The Seneca: 31st Street South to Interstate 235; or at two years from the date of the Real Estate Agreement, whichever comes first.

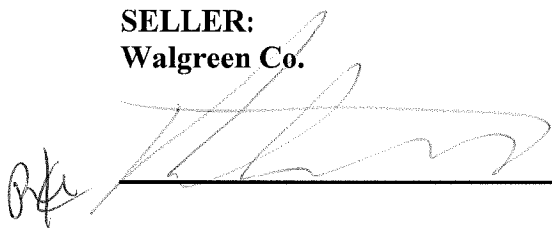
3. At Closing, the Buyer hereby agrees to purchase, and pay to the Seller, as consideration

for the conveyance to the Buyer the above-described real property for the sum of \$1,200.00. At Closing, the Buyer agrees to pay Seller for the cost of damage to the sprinkler system in the amount of \$6,240.00.

4. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above-described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time, but not to exceed thirty (30) days after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.
5. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
6. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before May 6, 2011.
7. Possession to be given to Buyer at closing
8. Closing costs shall be paid 100% by Buyer and 0% by Seller.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:
Walgreen Co.



BUYER:
City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor

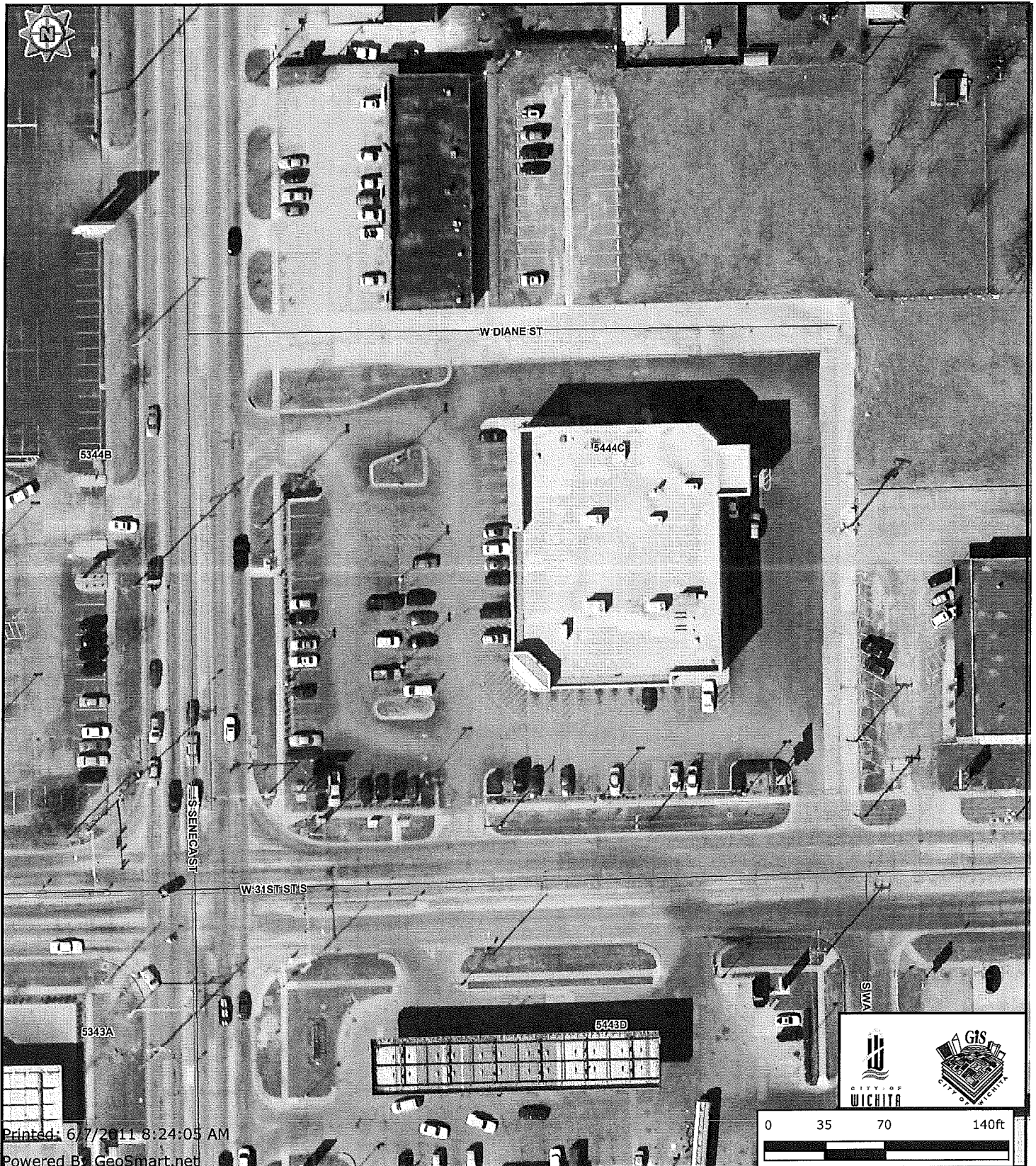
ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

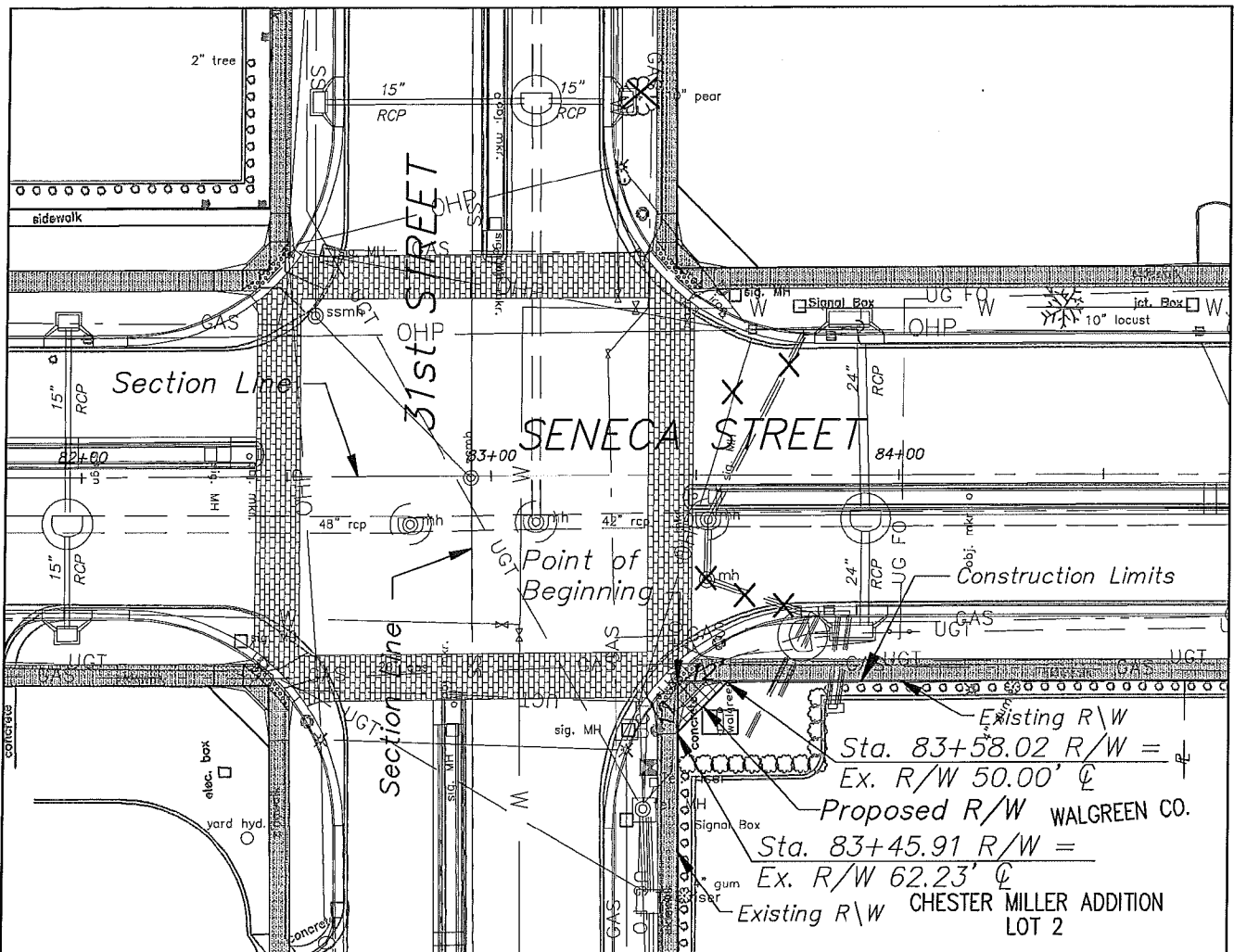
3150 S Seneca



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Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc., to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.




Walgreen Co.

Proposed R/W ACQ. LEGAL

A tract of land lying in the Southwest Quarter, Section 5, Township 28 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas more particularly described as follows:

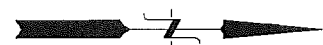
A triangular tract of land located in the Southwest Corner of Lot 2, Chester Miller Addition, an addition to Wichita, Sedgwick County, Kansas. More particularly described as follows; Beginning at the Southwest Corner of said Lot 2; thence north 12 feet along the West line of said Lot 2; thence Southeast to a point on the South line of said Lot 2, said point being 12 feet East of the said Southwest Corner of said Lot 2; thence West along said South line to the point of beginning.

 Proposed Right-of-Way

Tax Key # D 18497

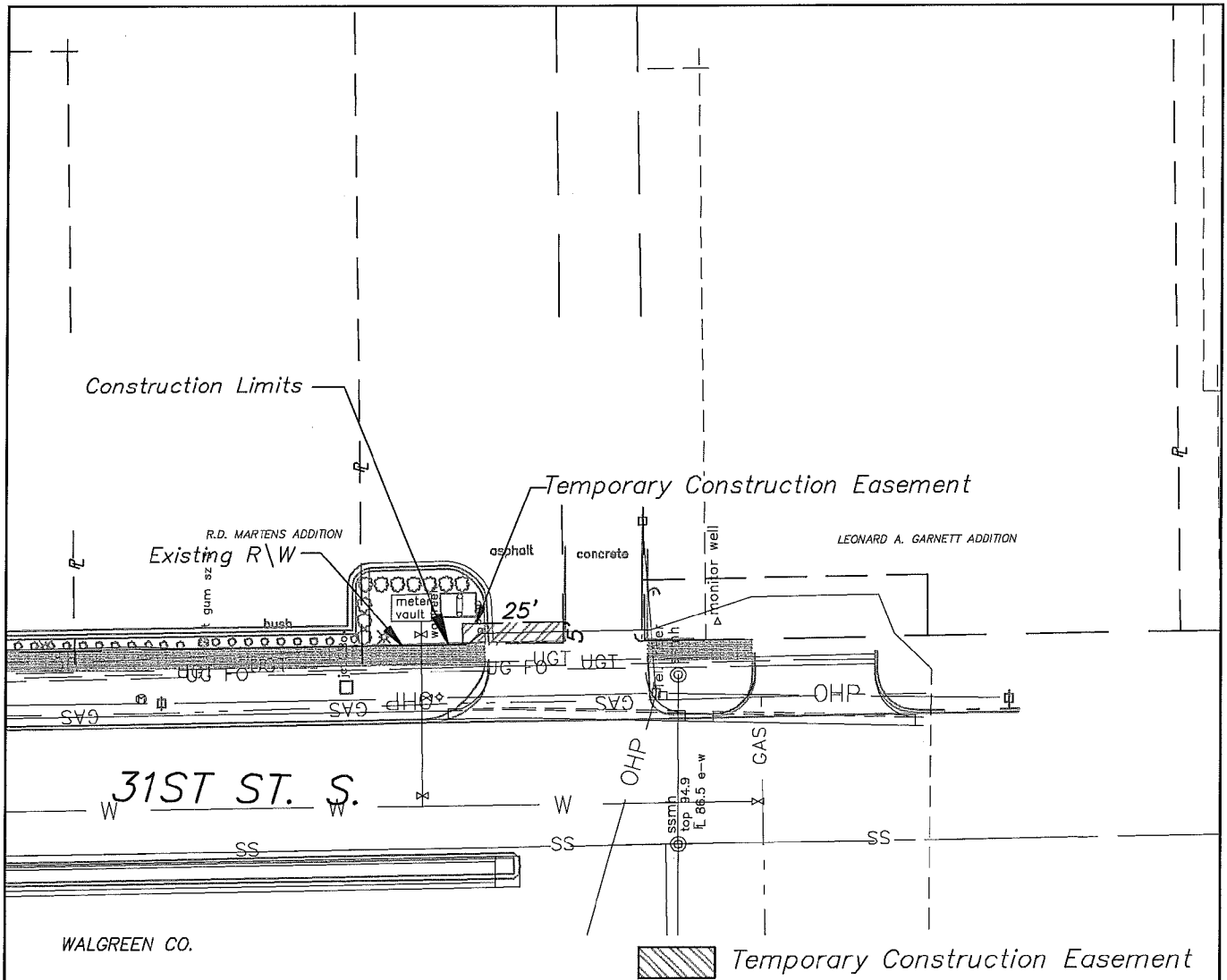
Proposed Right-of-way Acquisition Size: 72 Sq. Ft. +/-

SENECA STREET
I-235 TO 31st STREET
TRACT MAP
WALGREEN CO.
SEC 5-T28S-R1E



SCALE: 1"=40'

May 04, 2010



Proposed Temporary Construction Easement Legal Description:

A tract of land lying in the Southwest Quarter, Section 5, Township 28 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas more particularly described as follows:

The South 5 feet of the West 25 feet of the East 50 feet of Lot 1, Brentari Addition, Wichita, Sedgwick County, Kansas

Tax Key # D 201440002

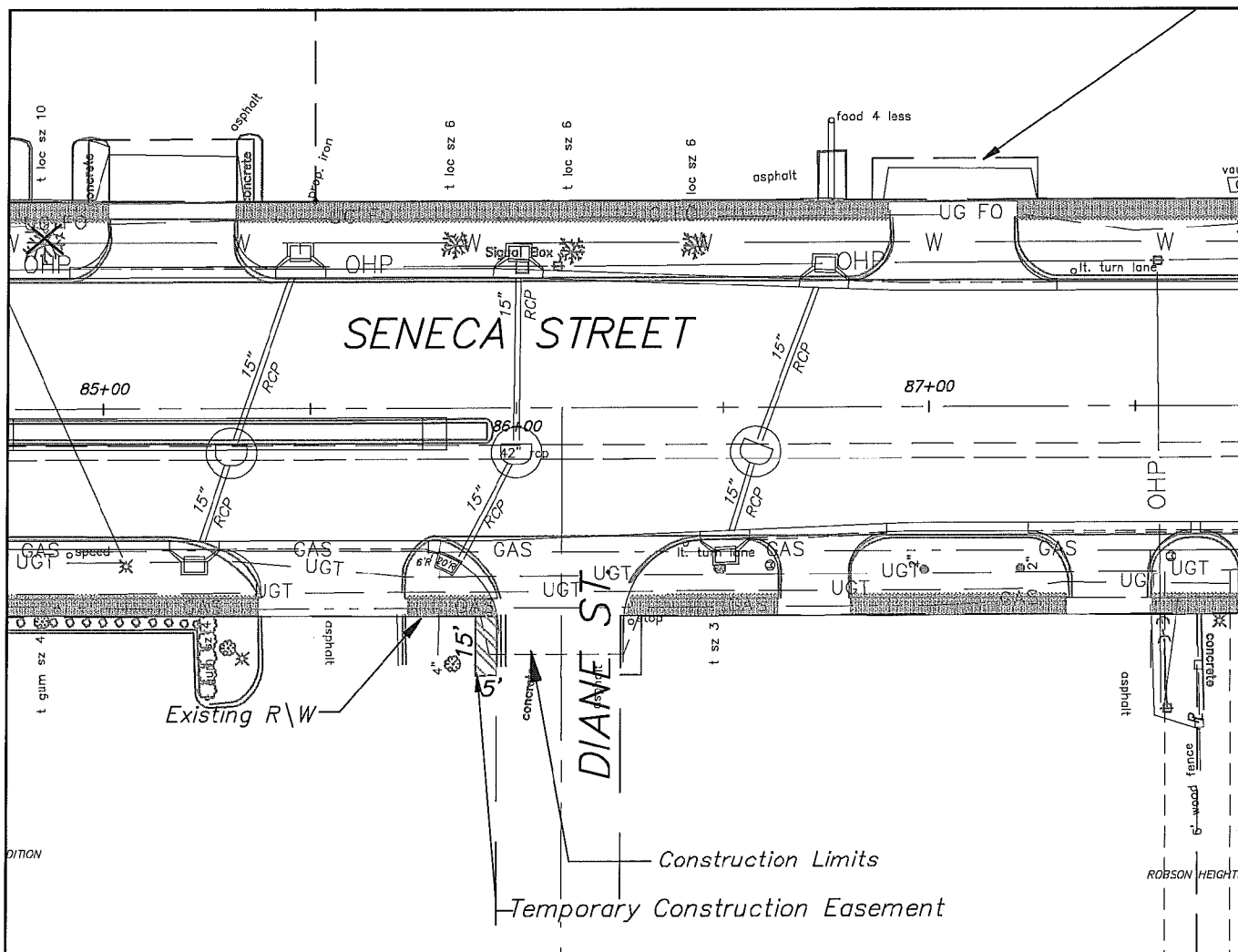
Proposed Right-of-way Acquisition Size: 125 Sq. Ft. +/-

SCALE: 1"=40'


SENECA STREET
1-235 TO 31st STREET
TRACT MAP
WALGREEN CO.
SEC 5-T28S-R1E

SCALE: 1"=40'

May 04, 2010



Walgreen Co.
3150 S SENECA

 Temporary Construction Easement

Proposed Temporary Construction Easement Legal Description:

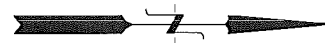
A tract of land lying in the Southwest Quarter, Section 5, Township 28 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas more particularly described as follows:

The North 5 feet of the West 15 feet of Lot 1, Chester Miller Addition, Wichita, Sedgwick County, Kansas;

Tax Key # D 18497

Proposed Right-of-way Acquisition Size: 75 Sq. Ft. +/-

SENECA STREET
1-235 TO 31st STREET
TRACT MAP
WALGREEN CO.
SEC 8-T28S-R1E



SCALE: 1"=40'

March 26, 2010

CITY OF WICHITA
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of a portion of 1357 North Minneapolis for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. One of the properties impacted by the project is the church located at 1357 North Minneapolis. The project requires the north 32 feet of the property and directly impacts the church structure, requiring its demolition.

Analysis: The owner rejected the appraised offer of \$200,000. After negotiation, the owner agreed to a purchase price of \$400,000. This amount includes any relocation benefits owed to the owner. The City will acquire the land required for the project and demolish all improvements on the site. The owner will remain in occupancy until the improvements need to be demolished for the project. After demolition, that part of the site not needed for the project will remain with the owner as will any remnant of the property adjacent on the west.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$435,000 is requested. This includes \$400,000 for the acquisition, \$30,000 for demolition, and \$5,000 for title work, surveys, title insurance, and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement; 2) Authorize the necessary signatures and; 3) Approve the budget.

Attachments: Real estate purchase agreement and aerial map.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2011 by and between Eastside Cathedral of Praise Church of God in Christ, Inc. hereinafter referred to as "Seller," whether one or more, and City of Wichita, Kansas, a municipal corporation, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by warranty deed for the construction and maintenance of road right-of-way and other infrastructure improvements within, upon and under the following described tract, to wit:

Lot 60 and the North 7 feet of Lot 61 on Herbert Avenue, now Minneapolis, in Rosenthal's 2nd Addition to Wichita, Sedgwick County, Kansas

2. The Buyer hereby agrees to purchase and pay to the Seller as consideration for the conveyance to the Buyer of the above-described tract the sum of Four Hundred Thousand Dollars and No/100 (\$400,000) in the manner following, to-wit: Three Hundred Seventy-five Thousand Dollars and No/100 (\$375,000) cash at closing and Twenty Five Thousand Dollars and No/100 (\$25,000.00) at vacation of the premises.

3. The Buyer hereby agrees to transfer to the Seller as additional consideration for the conveyance to the Buyer of the above-described tract that portion of Lots 33 and 34, Rosenthal's 2nd Addition to Wichita, Sedgwick County, Kansas not needed for public purpose.

4. Buyer and Seller agree that the Seller is a displaced person as an owner-occupant of 180-days or more and eligible for certain relocation benefits. The consideration described in 2. and 3. above represent full compensation due to Seller for the property as well as all relocation benefits due the owner under applicable State and Federal statutes.

5. A complete abstract of title certified to date, or a title insurance company's commitment to insure the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

6. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

7. It is understood and agreed between the parties hereto that time is of the essence and that this transaction shall be consummated on or before June 30, 2011.

8. The Seller further agrees to convey the above-described tract with all the improvements located thereon except for personal property and deliver possession of the same in the same

condition as they now are, reasonable wear and tear excepted.

9. Possession to be given to Buyer within thirty (30) days of the eminent domain appraiser's hearing associated with the project for which the property is being acquired but no later than September 30, 2011 unless said date is extended by mutual agreement of the parties. Buyer will be provide written notice of said date by Seller.

10. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

11. Buyer agrees to demolish improvements commonly known as 1357 North Minneapolis, 1343 North Minneapolis, and 1352 North Kansas Avenue, said improvements being owned by Seller. Said demolition will occur in a manner consistent with demolition standards set out by the City for similar structures in the project.

12. Site Assessment

A. At any time prior to the closing of this agreement, the Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the Property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the Property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder. The Buyer or its agents shall have the right, without the obligation, to enter upon the Property prior to closing to undertake an environmental site assessment or testing of the Property, at the buyer's sole expense.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. The Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Eastside Cathedral of Praise Church of God in Christ, Inc.

BUYER:

By Direction of the City Council

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law



1357 North Minneapolis



- Property Parcels
- Roads
 - State Highway
 - US Federal Highway
 - Interstate
 - KTA
 - Arterial
 - Collector
 - Minor
 - Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Airports
- SDERASTER.S-DEDATA.ORTH-01FT
- SDERASTER.S-DEDATA.ORTH-0
- City Limits
 - Andale
 - Bel Aire
 - Bentley
 - Cheney
 - Clearwater
 - Colwich
 - Derby
 - Eastborough
 - Garden Plain
 - Goddard
 - Haysville
 - Kechi
 - Maize
 - Mount Hope
 - Mulvane
 - Park City
 - Sedwick



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Repealing and Replacing EDX Ordinance (Cox Machine) (District V)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendations: Approve the repealing and replacing ordinance.

Background: On April 19, 2011, the Wichita City Council adopted Ordinance No. 48-990 providing an Economic Development Tax Exemption (EDX) to Cox Machine, Inc. (Cox). The Exemption was granted for an expansion to the composite manufacturing facility located at 5338 West 21st North in northwest Wichita.

The ordinance that was adopted exempted the manufacturing facility expansion (real property), but due to a drafting error the relationship between Cox Machine, Inc. and Coxco, LLC was misstated. A repealing and replacing ordinance is needed, therefore, to clarify the relationship.

Analysis: Cox Machine, Inc. has a land lease with a real estate holding entity, Coxco, LLC which is owned by the owner of Cox Machine, Inc. Under State law, EDX exemptions are not allowed for leased property unless the company qualifying for EDX is related to the landlord by ownership. Cox Machine, Inc. is related to Coxco, LLC by ownership but is not a wholly owned subsidiary of Coxco, LLC. This is the correct relationship required by the Kansas Court of Tax Appeals (COTA).

Financial Considerations: There is no additional financial impact.

Goal Impact: Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: The attached amending ordinance has been approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council adopt the amending ordinance and authorize the necessary signatures.

Attachments: Repealing and Replacing Ordinance

____FIRST PUBLISHED IN THE WICHITA EAGLE ON JULY 1, 2011____

ORDINANCE NO. 49-024

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF COX MACHINE, INC., SO EXEMPTED.

WHEREAS, Article 11, Section 13, of the Kansas Constitution provides that the governing body of the City may, by Ordinance, exempt from all ad valorem taxation all or any portion of the appraised value of certain property meeting the requirements of the constitutional provision; and

WHEREAS, the City of Wichita has adopted an Economic Development Incentive Policy by which the City will consider granting tax exemptions upon a clear and factual showing of direct economic benefit including the creation of additional jobs or the upgrading of existing jobs and the stimulation of additional private investment; and

WHEREAS, Cox Machine, Inc., which has a land lease with a real estate holding entity, Coxco, LLC , which is owned by the owner of Cox Machine, Inc., requests an ad valorem tax exemption on a proposed relocation project of 100% for a five-plus-five year term on the construction of a new; and

WHEREAS, Cox Machine, Inc., has operated within the City for more than fifty years as a manufacturer of aircraft parts; and

WHEREAS, Cox Machine, Inc., proposes a \$3,616,236 expansion by the construction of a new building expansion as well as \$2,500 in equipment to be located at 5338 W. 21st St. N. in Wichita; and

WHEREAS, the City Council of the City of Wichita has reviewed the application and supporting documentation supplied by Cox Machine, Inc., has reviewed the impact statements provided by Staff, and the Cost-Benefit Analysis by the Wichita State University and has conducted a public hearing on such application on April 5, 2011; and

WHEREAS, the City Council of the City of Wichita has found and determined:

1. Cox Machine, Inc. is an existing business located in Wichita, Kansas, and intends to expand its business by construction of a building expansion.

2. The construction of the expansion for which exemption is given occurred after June 4, 2008. No exemption will be given for construction which occurred before that date.

3. Such construction is to be used exclusively for manufacturing articles of commerce.

4. By such expansion, Cox Machine, Inc. will create new employment for 37 employees within five years after the start of the project.

5. Tax exemption will be given only for the construction of a building expansion and acquisition of integrally-related machinery and equipment.

6. The property on which exemption is given will meet the requirements of the Kansas Constitution and the City of Wichita's Economic Development Incentive Policy.

7. Such ad valorem tax exemption is in the public interest providing for economic growth and benefit including the creation of jobs and stimulating additional private investment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,

1. The City Council of the City of Wichita, Kansas hereby makes a factual determination that an ad valorem tax exemption of the type requested by Cox Machine, Inc. is required to retain jobs in the State of Kansas, and that the property to be exempted is to be used exclusively for manufacturing articles of commerce.

2. Cox Machine, Inc. is hereby granted an ad valorem tax exemption of 100% for a five-year term on the construction of a building expansion and the purchase of personal property described as a Grid Plate and 100% for a second five years, subject to approval by the then current governing body, located within the Wichita City limits 5338 W. 21st Street North in Wichita, at an estimated cost of \$3,616,236. Such exemption is to begin in the calendar year after the calendar year in which the expansion is completed, and may be terminated early (and Cox Machine, Inc. may be required to repay amounts previously abated), in the event of any failure by Cox Machine, Inc., to perform its obligations under the Economic Development Incentive Agreement it has executed with the City.

3. The Economic Development Incentive Agreement between the City of Wichita and Cox Machine, Inc. is hereby approved.

4. The Office of Urban Development shall be responsible for monitoring the performance of Cox Machine, Inc. and shall provide annual reports on such performance.

5. Such exemption is subject to verification that the level of employment at the time of the completion of the project is at least equal to the level of employment as stated in Cox Machine, Inc.'s written request for ad valorem tax exemptions as presented to the City Council and to administrative staff and dated February 15, 2011 and as stated in Cox Machine, Inc.'s annually approved EEO/AA Plan.

6. Such exemption may hereafter be withdrawn by the City Council upon a finding that Cox Machine, Inc. no longer is entitled to such exemption in accordance with the Economic Development Incentive Agreement, which Cox Machine, Inc. has executed with the City.

7. The City Council may, at its discretion, require Cox Machine, Inc. to return all funds exempted if there is a failure to meet the terms and conditions of the Economic Development Incentive Agreement which Cox Machine, Inc. has executed with the City.

8. Upon finding that Cox Machine, Inc. has failed to meet its obligations under the Economic Development Incentive Agreement, the City Council shall require the repayment of all prior amounts of taxes that have been exempted and shall withhold any future exemption of taxes on Cox Machine, Inc.'s expansion project. All repayments shall be redistributed to the local taxing authorities at the proper taxing rates.

9. Ordinance No. 48-990 of the City of Wichita, Kansas, as the same existed prior to the effective date hereof, is hereby repealed.

10. This Ordinance shall be in full force and effect from and after its passage and publication in the official City paper.

Passed by the governing body of the City of Wichita, Kansas this 28th day of June, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

**City of Wichita
City Council Meeting
June 21, 2011**

TO: Mayor and City Council

SUBJECT: Amendment to Kansas Humane Society Lease Agreement

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Recommend the City Council approve the Amendment to the Lease Agreement between the City of Wichita and the Kansas Humane Society.

Background: On March 7, 2006, the City of Wichita entered into a lease agreement with the Kansas Humane Society for a portion of the property located at K-96 highway and Hillside, commonly referred to as the Murfin Animal Care Campus. This lease agreement has been in effect without change since the opening of the new Wichita Animal Shelter and Kansas Humane Society facilities in April of 2009.

Analysis: The original lease agreement called for common area expenses to be shared in equal amounts between the City of Wichita and the Kansas Humane Society. The original lease agreement called for restitution of expenses to be billed by the City of Wichita to the Kansas Humane Society at 1/12th of an estimated budget that would be set prior to the actual twelve month calendar year, with any overage or deficiency to be paid or credited in equal amounts over the following calendar year. This practice would allow for the Kansas Humane Society to take up to two full years to pay its share of the actual expenses of one year of common operating expenses. To remain consistent with standard billing practices employed by the Police Department, City Staff and the Kansas Humane Society have agreed to amend the lease agreement to bill quarterly based upon actual expenses incurred during the preceding three month period. This will provide for full cost recovery of the Kansas Humane Society's share of the actual expenses during the calendar year that expenses were incurred, resulting in better accounting practices for common area expenses.

Financial Considerations: There are no financial considerations.

Goal Impact: Provide Safe and Secure Neighborhoods and enhance quality of life by amending existing lease agreement to more efficiently provide for cost recovery by the Police Department.

Legal Considerations: The lease agreement amendment has been drafted by the Law Department and is approved as to form.

Recommendations/Actions: It is recommended that the City Council approve the Amendment to the Lease Agreement between the City of Wichita and the Kansas Humane Society.

Attachments: Original lease agreement and Amendment to the Lease Agreement.

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement ("Amendment") is made and entered into this _____ day of _____, 2011, by and between

City of Wichita
455 North Main
Wichita, Kansas 67202
"Landlord"

AND

Kansas Humane Society
3313 N. Hillside
Wichita, Kansas 67219
"Tenant."

WHEREAS, on March 7, 2006, Tenant and Landlord entered into a Lease Agreement pertaining to a portion of real property located near the intersection Hwy 96 and Hillside located in the City of Wichita, a copy of said Lease Agreement is attached hereto as Exhibit A;

WHEREAS, the parties have agreed to amend the Lease Agreement as set forth in this Amendment.

NOW, THEREFORE, the parties here agree to amend the Lease Agreement as follows:

1. Amendment to Section 3.1.B. Section 3.1.B. of the Lease Agreement is hereby amended, restated and replaced in its entirety as follows:

B. Tenant shall pay, as Additional Rent hereunder, 50% of all the reasonable and necessary expenses incurred by Landlord in connection with the following (hereinafter "Common Area Expenses"): mowing, trimming and care of the lawn and landscaped areas of the Development; snow removal from the accessways, driveways, parking lots and sidewalks within the Development; the costs of lighting the parking areas, driveways and accessways within the Development, including maintenance, repair and replacement of lighting bulbs and facilities as necessary; maintenance of the storm water drainage and detention facilities serving the Development; the maintenance and repair, including resurfacing and striping, of the driveways, accessways and parking facilities serving the Development, the maintenance and repair of equipment located at the Development exclusively for common use, feces collection and disposal from common area dog walks and parks as may be constructed. In August during each year of the term of this Lease, Landlord and Tenant shall jointly agree on an estimated budget for the Common Area Expenses ("Annual Estimated Amount") for the succeeding calendar year. Landlord shall provide an invoice to Tenant on the first day of each calendar quarter (January 1,

Amendment to Lease Agreement

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April 1, July 1, and October 1) during such succeeding calendar year, for the actual amount of expenses incurred during the previous calendar quarter, and showing a detailed statement of all charges incurred during such quarter. Tenant shall pay such invoice within 30 days of receipt. With respect to the costs incurred as Common Area Expenses, Tenant shall only be obligated to pay the reasonable costs; to the extent Landlord utilizes its own equipment and employees to perform such maintenance and repair obligations, the amount which shall be included in the Common Area Expenses shall be limited to what an unrelated third party, in a competitive bid situation, would charge for the same service.

2. Defined Terms. The capitalized terms contained herein, to the extent not defined herein, shall have the meaning which they were given under the Lease Agreement.

3. Amendment Controls. Except as provided herein, all of the other terms and conditions of the Lease Agreement remain in full force and effect; provided, however, that in the event anything contained in the Lease Agreement conflicts with anything in this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Lease Agreement in duplicate the day and year first above written.

ATTEST:

“LANDLORD”
City of Wichita, Kansas

Karen Sublett, City Clerk

By: _____
Carl Brewer, Mayor

APPROVED AS TO FORM BY:

Gary E. Rebenstorf, Director of Law

“TENANT”
Kansas Humane Society of Wichita, Kansas
By: _____
Kim Janzen, President/CEO

original - city clerk's office
copy

CITY CLERK'S ORIGINAL
RETURN TO CITY CLERK

LEASE

THIS LEASE is made as of this 7 day of March, 2006, by and between the City of Wichita, Kansas ("Landlord"), and the Kansas Humane Society, a Kansas not-for-profit corporation ("Tenant"). The purpose of this Lease document is to dedicate the land described below for use in a long-term public-private partnership to provide animal shelter facilities for the City of Wichita and its environs. To that end, the parties agree as follows:

ARTICLE 1
GRANT AND TERM

Section 1.1 Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord that certain real estate owned by Landlord generally located near the intersection of Hillside Avenue and K-96 in Wichita, Kansas, which real estate is more particularly described on Exhibit "A" attached hereto and made a part hereof, together with all improvements thereon and appurtenances thereto (collectively "Leased Premises"). The Leased Premises are part of a larger tract of real property owned by Landlord and more particularly described on Exhibit "B" attached hereto and made a part hereof ("Development").

Section 1.2. Term. Subject to the provisions contained herein, the term of this Lease shall be for a period of 50 years, commencing on the date that Landlord delivers the Leased Premises to Tenant, with all of Landlord's Work completed ("Commencement Date"). Landlord and Tenant each agree to execute an amendment to this Lease setting forth the exact Commencement Date as soon as practical following the Commencement Date. Notwithstanding the foregoing, in the event Tenant has not commenced construction of the Facilities (as defined in Section 1.4 below) within 2 years of the date of this Lease, Landlord shall have the right to terminate this Lease upon not less than 90 days prior written notice to Tenant; provided, however, that if Tenant commences construction of the Facilities within such 90 day period, and reasonably pursues construction thereafter, Landlord's right to terminate shall end and this Lease shall continue in full force and effect.

Section 1.3. Options to Extend. Tenant shall have the option to extend this Lease for two successive periods of five years each upon the same terms and conditions as contained herein, other than the reduction of the number of options to extend by one following the exercise of each option, with no options remaining following the exercise of the second option. In the event Tenant elects to exercise any option to extend, Tenant shall do so by providing Landlord written notice thereof ("Extension Notice") not less than 30 days prior to the expiration of the then current term hereof. Notwithstanding the foregoing, if Tenant shall fail to send the Extension Notice within the time and in the manner hereinbefore provided, this Lease shall be deemed to be automatically extended on a month-to-month basis and Landlord shall not be permitted to terminate this Lease for Tenant's failure to exercise its option to extend until such time as Landlord provides written notice to Tenant that it has not received the Extension Notice and provides Tenant with a period of ten (10) business days after receipt by Tenant of such notice in which to send the Extension Notice to the Landlord.

Section 1.4. Tenant's Initial Improvements to Leased Premises. Tenant agrees to design and construct on the Leased Premises a building of sufficient size to carry out Tenant's Permitted Use of the Leased Premises ("Facilities"), including sufficient space to perform all animal adoption services needed by both parties. Prior to commencing any construction of the Facilities, Tenant shall submit the plans and specifications ("Plans") to the Landlord for approval of the exterior architectural design components, exterior construction materials, public art component, and landscaping by Landlord's construction manager and the City's Art and Design Council in order to achieve a harmonious appearance with the structures to be constructed by Landlord on the Development, which approval shall not be unreasonably

06-0244

withheld, conditioned or delayed. Any disapproval of the Plans, shall provide a detailed list of the deficiencies of such Plans. Tenant shall construct the Facilities in a good and workmanlike manner and in compliance with all applicable laws, rules, codes and ordinances. The City has obtained an opinion from the Zoning Administrator that the project as intended would qualify as Governmental Use within the current Limited Industrial zoning for the tract. This use and zoning classification would allow incineration units as of right under the Uniform Zoning Code.

Section 1.5 Landlord's Work; Construction of Improvements to the Development.

A. Landlord shall construct the accessways and driveways to serve the Leased Premises (as set forth in subparagraph B. below) and Landlord shall cause any existing water lines and other City of Wichita utility lines to be relocated as may be needed to accommodate the construction of the Facilities (collectively the foregoing is referred to herein as "Landlord's Work"). To the extent any other utility lines need to be relocated to accommodate the construction of the Facilities, Tenant shall consult with Landlord concerning the same to determine the most advantageous location therefore with respect to the Facilities and other improvements to be constructed by Landlord on the Development. The costs associated with the construction of accessways and driveways to serve the Leased premises and moving and relocating all utility lines shall be shared equally by Landlord and Tenant. Additionally, Landlord covenants and agrees, at its sole cost and expense, to demolish and remove its existing animal shelter facility located on or near the Development as soon as Landlord completes construction of its new animal shelter on the Development.

B. Landlord shall construct within the Development roadways for ingress and egress to the Leased Premises and the Development, parking facilities, drainage facilities and a retention pond, which shall be of a sufficient size to adequately serve the Leased Premises and the other portions of the Development and the jointly planned improvements thereon. The costs of construction of these joint facilities shall be apportioned between the parties at the rate of 50% of such costs to Tenant and 50% to Landlord. The Landlord will maintain such joint facilities so the same are at all times in a good, safe and usable condition as part of the Common Area of the Development. Tenant shall have the non-exclusive right and easement to such Common Areas, and all of the Common Area of the Development, including, without limitation, the non-exclusive right and easement to use all driveways, accessways and parking lots, and all drainage facilities and detention ponds (including the right to drain all surface water and runoff over the Development through and into the same). Tenant shall additionally have the non-exclusive right to use any dog walks, dog parks, and other such similar facilities which may be constructed for public use on the Development. Construction of such other additional facilities intended for common use shall be by agreement of the parties. The costs of construction of such additional joint facilities shall be apportioned between the parties at the rate of 50% of such costs to Tenant and 50% to Landlord, and shall be maintained by the Landlord as part of the Common Area of the development.

ARTICLE 2
RENT

Section 2.1. Annual Rent. Tenant shall pay to Landlord on the Commencement Date and on each annual anniversary of the Commencement Date, as Annual Rent, the sum of One Dollar (\$1.00).

Section 2.2. Rent Defined. "Rent" shall include Annual Rent and Additional Rent.

ARTICLE 3
COMMON AREA MAINTENANCE; ADDITIONAL RENT

Section 3.1 Common Area Maintenance and Expenses.

A. Landlord shall be obligated to maintain the Common Areas of the Development, including all lawn and landscaped areas; all accessways, driveways and parking lot facilities; and the storm water drainage and detention facilities serving the Development in good, sightly, safe and usable condition at all times, including, without limitation, the regularly mowing and trimming of all lawn areas , and keeping all driveways, accessway and parking lots reasonably free of potholes and safe for vehicular and pedestrian traffic.

B. Tenant shall pay, as Additional Rent hereunder, 50% of the all reasonable and necessary expenses incurred by Landlord in connection with the following (herein "Common Area Expenses"): mowing, trimming and care of the lawn and landscaped areas of the Development; snow removal from the accessways, driveways, parking lots and sidewalks within the Development; the costs of lighting the parking areas, driveways and accessways within the Development, including maintenance, repair and replacement of lighting bulbs and facilities as necessary; maintenance of the storm water drainage and detention facilities serving the Development; the maintenance and repair, including resurfacing and striping, of the driveways, accessways and parking facilities serving the Development, the maintenance and repair of equipment locate at the development exclusively for common use, feces collection and disposal from common area dog walks and parks as may be constructed. In August during each year of the term of this Lease, Landlord and Tenant shall jointly agree on an estimated budget for the Common Area Expenses ("Annual Estimated Amount") for the succeeding calendar year, and Tenant, each month during such succeeding calendar year, as Additional Rent under this Lease, shall pay 1/12th of its proportionate share of the Annual Estimated Amount. Within 60 days of the end of each calendar year, Landlord shall submit to Tenant a detailed statement showing the actual amount of the Common Area Expenses incurred for the prior year. In the event such statement shows that Tenant underpaid its share of such Common Area Expenses for the preceding year, such shortfall shall be added to the monthly estimated payments to be made by Tenant during such current year, in equal amounts over the remaining payments for such current year; if such statement shows that Tenant has overpaid its share of such Common Area Expenses for the preceding year, such overpayment shall be credited against the remaining payments for such current year, in equal amounts over the remaining payments for such current year. With respect to the costs incurred as Common Area Expenses, Tenant shall only be obligated to pay the reasonable costs; to the extent Landlord utilizes its own equipment and employees to perform such maintenance and repair obligations, the amount which shall be included in the Common Area Expenses shall be limited to what an unrelated third party, in a competitive bid situation, would charge for the same service.

ARTICLE 4
USE OF PREMISES

Tenant shall be restricted to using the Leased Premises for an animal shelter and veterinary clinic, and ancillary uses such as animal training classes, public education, meeting facilities, special events, community education, private pet cremation services, columbarium and memorial garden, animal grooming, adoptions, sale of pet related merchandise, and other activities related to domesticated/companion animal welfare ("Permitted Use"). No use outside the Permitted Use shall be permitted without the written consent of Landlord.

ARTICLE 5
TENANT IMPROVEMENTS, FIXTURES, ALTERATIONS, ETC.

Section 5.1 Additional Improvements By Tenant. Following the construction of the Facilities, Tenant may make such additional improvements or alterations to the interior of the Leased Premises as it desires. In the event Tenant desires to construct an improvement or make an Alteration to the exterior of the Facilities (collectively an "Exterior Alteration"), Tenant shall prepare outlined plans and specifications ("Outline Specifications") for such Exterior Alteration, showing the exterior elevations and specifying the building materials to be used, to be submitted to and approved by Landlord and the City Art and Design Board, which approvals shall not be unreasonably withheld, conditioned or delayed, prior to commencing the construction of any such Exterior Alterations. Tenant shall cause any improvement and alterations to the Leased Premises, including any Exterior Alterations, to be constructed in a good and workmanlike manner, in accordance with all applicable laws, requirements, ordinances, codes, rules, and regulations in existence at the time of construction. Tenant shall obtain building permits for any such improvements or alterations (including any Exterior Alterations).

Section 5.2 Ownership of Improvements. All alterations and improvements (including the Facilities and any Exterior Alterations) made by Tenant during the term hereof shall remain the sole property of Tenant for the term of this Lease. Upon the expiration or termination of the term of this Lease, or any renewal thereof, all such alterations and improvements (including the Facilities and any Exterior Alterations) shall become the property of Landlord; provided, however, that Tenant shall be entitled to remove its trade fixtures, personal property, and equipment.

Section 5.3 Mechanic's Liens. Neither the Landlord nor Tenant shall do or suffer anything to be done whereby the Leased Premises or any part of the Development may be encumbered by any mechanic's lien or other similar lien. If, whenever and as often as any mechanic's lien or other similar lien is filed against the Leased Premises or any part thereof, or any part of the Development, purporting to be for or on account of any labor, materials or services furnished in connection with any work in or about the leased property done by, for or under the authority of either party or anyone claiming by, through or under such party, such party shall discharge the same of record within thirty (30) days after the filing date of the lien. Notice is hereby given that the Landlord does not authorize or consent to and shall not be liable for any labor or materials furnished to Tenant or anyone claiming by, through or under Tenant upon credit, and that no mechanic's lien or similar lien for any such labor, service or materials shall attach to or affect the reversionary or other interest of the Landlord in and to the leased property or any part of such property.

ARTICLE 6
MAINTENANCE

Section 6.1 Tenant's Responsibilities. The Leased Premises, including the Facilities located thereon or subsequently constructed thereon, and all fixtures, equipment, and improvements related thereto (except for the parking, sidewalks, accessways, and lawn and landscaping areas which shall be maintained by Landlord as part of the Common Area under the shared expense arrangement of Section 3.1); and all other fixtures, equipment, and improvements thereon, shall be kept in slightly and good operating condition, reasonable wear and tear excepted, at all times by Tenant, at Tenant's sole cost and expense. Tenant shall keep the Facilities in compliance with all applicable codes, ordinances, statutes, regulations or other governmental requirements applicable thereto.

Section 6.2 Utility Charges. Tenant shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity or any other utility used or consumed in, on, or about the Leased Premises from and after the Commencement Date.

Section 6.3 Surrender of Leased Premises. Subject to Article 10, at the expiration or termination of the tenancy hereby created, Tenant shall surrender the Leased Premises in good operating condition, reasonable wear and tear excepted, and shall surrender all keys for any buildings located on the Leased Premises to Landlord. Tenant shall remove all its trade fixtures and personal property before surrendering the Leased Premises as aforesaid, and shall repair any damage to the Leased Premises caused thereby. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease and Tenant's surrender of the Leased Premises.

ARTICLE 7 INSURANCE AND INDEMNITY

Section 7.1 Liability Insurance. Tenant shall, at its sole cost and expense, during the entire term hereof, keep in full force and effect or cause to be kept in full force and effect a policy of Commercial General Liability Insurance ("Liability Insurance"). Tenant shall cause the Landlord to be named as an additional insured on such Liability Insurance. The minimum acceptable limits for Tenant's Liability Insurance shall not be less than the greater of Five Hundred Thousand dollars (\$500,000) combined single limit coverage for bodily injury, personal injury and property damage, or the legislative cap imposed on municipalities under the Kansas Tort Claims Act, as amended, or through legislation of similar effect.

Section 7.2 Property Insurance. Tenant shall maintain "all-risk" insurance concerning building improvements located on the Leased Premises in an amount equal to the replacement cost of the Facilities (exclusive of foundations and excavations). Landlord shall be named as an insured "as its interest may appear" under such insurance policy. Tenant shall also carry, under the same terms, a builder's risk policy covering materials and the structure during the construction phases

Section 7.3 Proof of Insurance. With respect to all policies of insurance which Tenant is required to acquire and maintain under this Lease, Tenant shall deliver to Landlord, on or prior to the Commencement Date, a certificate of insurance containing a 30 day notice of cancellation, material modification, or failure to renew clause benefiting Landlord, and Tenant shall thereafter provide Landlord a new certificate of insurance upon each renewal of such policies. Such policies shall be issued by nationally recognized insurance companies qualified under the laws of the State of Kansas to insure the risks covered by such policies. Such policies may be subject to a commercially reasonable deductible.

Section 7.4 Landlord's Liability Insurance. Landlord shall, at all times, carry a policy of Commercial General Liability Insurance for its operations within the Development, or an adequate reserve as a self insured entity, in an amount equal to the the legislative cap imposed on municipalities under the Kansas Tort Claims Act, as amended, or through legislation of similar effect, which shall name Tenant as an additional insured thereunder.

ARTICLE 8 ASSIGNMENT AND SUBLETTING

Tenant shall not sublease, assign or encumber its interest in the Lease or any part thereof without the prior written consent of Landlord. If such proposed assignees or sublessees are not-for-profit entities who shall use the Leased Premises for the Permitted Use, such consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 9
WASTE, GOVERNMENTAL REGULATIONS

Section 9.1 Waste. Tenant shall not commit or suffer to be committed any waste upon the Leased Premises.

Section 9.2 Governmental Regulations. Tenant shall, at Tenant's sole cost and expense, comply in all material respects with all laws, rules, regulations, decrees and requirements of all county, municipal, state, federal and other applicable governmental authorities now in force or which may hereafter be in force pertaining to its operations within the Leased Premises, including, without limitation, obtaining all necessary building permits for the Facilities and any other improvements to the Leased Premises or alterations of the Facilities or other improvements.

ARTICLE 10
DAMAGE OR DESTRUCTION

If, during the term of the Lease, the Facilities or any portion thereof, are damaged or destroyed, in whole or in part, by fire or other casualty, Tenant shall promptly notify Landlord in writing as to the nature and extent of such damage or loss and whether it is economically feasible to rebuild, repair, restore or replace such damage or loss. If Tenant shall determine that such rebuilding, repairing, restoring or replacing is economically feasible, it shall forthwith proceed with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing. In such case, any net proceeds of casualty insurance required by the lease and in excess of sums needed to defray the costs of repairing and restoring any such damage or loss of the Facilities shall be used to improve or maintain the Facilities unless said proceeds were in payment for the Tenant's personal property or other items not owned by the Landlord.

If Tenant shall determine that rebuilding, repairing or restoring or replacing the Facilities is not economically feasible, Tenant shall raze the Facilities and clear the Leased Premises of any debris and any proceeds of casualty insurance remaining following such razing and clearing of debris shall be used to acquire substitute land and improvements which will take the place of the Property and Facilities subject to the lease, or alternatively (at the election of the Tenant), shall be paid to the Landlord (unless said proceeds were in payment for the Tenant's personal property or other items not owned by Landlord), in which latter case, the lease shall thereupon terminate, and the Tenant shall tender possession of the premises (i.e., the Property and damaged Facilities, but not removable personal property owned by the Tenant) to the Landlord.

ARTICLE 11
DEFAULT

Section 11.1 Events of Default. Each of the following shall constitute an event of default ("Event of Default") under this Lease:

A. Tenant shall fail to pay any Rent, or other sums when due under this Lease if such failure continues for a period of 30 days after written notice specifying such failure has been delivered to Tenant.

B. Tenant shall: (1) make a general assignment for the benefit of creditors; (2) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief"); (3) become the subject of

any proceeding for relief which is not dismissed within 120 days of its filing or entry; or (4) be dissolved or otherwise fail to maintain its legal existence.

C. Tenant's ceasing to be a not-for-profit entity

D. Failure of Tenant to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Tenant, other than those specifically referred to above, for more than sixty (60) days after written notice of such default shall have been given to Tenant; provided, however, if such default cannot reasonably be cured within such 60 day period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such 60 day period and thereafter diligently and in good faith continues its attempts to cure such default.

Section 11.2 Landlord's Remedies.

A. In the event Tenant shall fail to timely cure a default under 11.1.B. or D. above (a "Covenant Default"), before Landlord may exercise any other remedy provided herein or at law or equity, Landlord shall adhere to the following remedy escalation system: (1) a liquidated damage amount of \$100 for every week following the 60th day such default remains uncured (provided, however, that if a longer period of time is necessary to effect such cure, the liquidated damages shall not apply until Tenant has failed cure such Covenant Default within a reasonable time thereafter or if Tenant fails to diligently pursue such cure); (2) in the event the Covenant Default is not cured for a period of 4 weeks following the time the initial \$100 liquidated damages has begun to accrue, the liquidated damages amount shall be increased to \$500 per week for every week thereafter.

B. In the event that (1) such Covenant Default is not cured, and all such accrued liquidated damages paid, within 8 weeks after the increase of the liquidated damages to \$500 per week, or (2) if there is an uncured default arising under 11.1.A. or C., then the Landlord may, but is not required, to terminate this Lease, and reenter and take possession of the leased property and all improvements thereon. In such event the Landlord shall have the right at once, upon giving written notice to the Lessee, to declare this Lease terminated, and to enter and take full possession of the buildings and premises by force or otherwise, and with or without legal process to expel, oust and remove any and all parties who may occupy any part of said buildings or premises, and all goods and chattels not belonging to the Landlord that may be found within or upon the same, and without being liable to prosecution or to any claim for damages as a result thereof. In the event of cancellation of this Lease by the Landlord in accordance with the provisions of this article, all rights, powers, and privileges of the Tenant thereunder shall cease and the Tenant shall immediately vacate said buildings and leased premises, and shall make no claim of any kind whatsoever against the Landlord its agents or representatives by reason of such cancellation or any act incident thereto.

Section 11.3 Any acceptance or acquiescence by the Landlord for any period, or periods, after a default in any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Tenants, shall not be deemed a waiver of any rights on the part of the Landlord to cancel this Lease for failure by the Tenant so to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed.

Section 11.4 Landlord's Default. Landlord shall not be in default in the performance of any obligation required to be performed under this Lease unless Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's

failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Upon a default by Landlord, Tenant may, in addition to all other rights and remedies available to Tenant at law or in equity, cure such default on behalf of and at the expense of Landlord and do all reasonably necessary work (which Landlord has failed to do, in breach of its duty pursuant to this Lease) and make all necessary payments (which Landlord has failed to pay, in breach of its duty pursuant to this Lease) in connection therewith to the extent necessary in Tenant's discretion, reasonably exercised, to protect Tenant's leasehold interest and Tenant's continued use and occupancy of the Leased Premises. Landlord shall, within ten (10) days following receipt of "paid" bills, pay Tenant the amount so paid by Tenant together with interest thereon, at an interest rate equal to the lesser of 10% per annum or the maximum rate allowed by law, from the date incurred by Tenant. In the event Landlord fails to pay Tenant as provided in the preceding sentence, the amount or amounts paid by Tenant, together with all costs and interest, may be set off against each installment of Rent as and when paid by Tenant.

Section 11.5 Right to Cure Defaults. Landlord may, but shall not be obligated to, cure at any time, without notice, any default by Tenant under this Lease; and, whenever Landlord so elects, all costs and expenses incurred by Landlord in curing a default, together with interest on the amount of costs and expenses so incurred at the lesser of 10% per annum or the maximum rate allowed by law shall be paid by Tenant as Additional Rent.

Section 11.6 Remedies Cumulative. The parties remedies as specified herein are cumulative and in addition to any rights or remedies available to it in equity or law.

ARTICLE 12 ACCESS BY LANDLORD

Landlord, or Landlord's representatives, shall have the right, upon reasonable advance notice to Tenant, to enter the Leased Premises at all reasonable times to examine and inspect the same, which times shall be during normal business hours except in emergency circumstances. Landlord agrees not to unreasonably disturb Tenant in the operation of its business and enter the building located on the Leased Premises at such times as shall be calculated to minimize such disturbance.

ARTICLE 13 TAXES; LIMITATION

Section 13.1 Taxes on Lease Premises and Tenant's Personal Property. Tenant shall be responsible for and shall pay before delinquency all municipal, county and/or state taxes which may be assessed during the term of this Lease against the Leased Premises, the Facilities, and any personal property of any kind owned by or placed in, upon or about the Leased Premises by Tenant.

Section 13.2 Loss and Damage. Tenant shall hold harmless and indemnify Landlord which shall not be liable for any loss or damage to Tenant's improvements to the Leased Premises, its trade fixtures or personal property, or the property of others located on the Leased Premises. Tenant shall hold harmless and indemnify Landlord, which shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, bursting of or leaks from any part of the Leased Premises or from the pipes, appliances or plumbing works. All property of Tenant kept or stored on the Leased Premises shall be so kept or stored at the risk of Tenant only, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

ARTICLE 14
HOLDING OVER, SUCCESSORS

Section 14.1 Holding Over. Any holding over after the expiration of the term hereof without the consent of Landlord, shall be construed to be a tenancy from month to month at the same Annual Rent applicable during the period prior to such expiration (prorated on a monthly basis) but shall otherwise be subject to all of the terms and conditions herein specified, so far as applicable to a month-to-month tenancy.

Section 14.2 Successors. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein.

ARTICLE 15
REPRESENTATIONS AND WARRANTIES OF LANDLORD; QUIET ENJOYMENT

Section 15.1 Landlord's Representations and Warranties. In addition to the other representations and warranties of Landlord contained in this Lease, Landlord hereby represents and warrants to Tenant as follows:

A. All taxes on the Leased Premises, except for current taxes not delinquent, have been paid in full prior to the Commencement Date.

B. Landlord is able to and will place Tenant in the peaceful and undisturbed possession of the Leased Premises on the Commencement Date.

C. To the best of Landlord's knowledge, there are no "Hazardous Materials" (such term shall include, without limitation, substances which are flammable, explosive, corrosive, radioactive, toxic, petroleum and petroleum products and any substances defined as hazardous substances, hazardous materials, toxic substances, or hazardous wastes in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Hazardous Materials transportation Act, the Resource Conservation and Recovery Act, any similar state laws, all amendments to these laws and regulations adopted or publications promulgated pursuant to these laws) presently located in, on, or under the Leased Premises including, without limitation, the subsurface soils and groundwater, have migrated to the Leased Premises from another source, have been installed, used, generated, manufactured, stored, released, or disposed of on, under, or about the Leased Premises by Landlord or any third person, not has Landlord received any notice or communication regarding any alleged Hazardous Materials on or about the Leased Premises and that the Leased Premises is in compliance with all federal, state, and local laws, ordinances, rules and regulations relating to any such Hazardous Materials. In the event any Hazardous Materials for which Landlord is responsible (as described above) be found on the Leased Premises during the term or any extension of the term hereof, Landlord shall bear all costs for the removal and remediation of the Hazardous Materials and shall restore the Leased Premises to substantially the same condition as it was in immediately prior to such removal and remediation work. Landlord shall immediately notify Tenant in writing of any notice, complaint, warning, claim, report, or communication received by Landlord from any federal, state, or local governmental or regulatory agency regarding Hazardous Materials on the Leased Premises, and provide Tenant with a copy of the same within 10 days of Landlord's receipt thereof.

D. Landlord agrees to indemnify and hold Tenant harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against Tenant, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys' fees, arising out of in connection with the breach or misrepresentation of the representations and warranties of Landlord set forth herein.

E. Tenant agrees not to bring or allow onto the leased premises or the development any Hazardous Materials or to do or allow any other form of environmental damage, and agrees to indemnify and hold Landlord harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against Landlord, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys' fees, arising out of in connection with the breach or misrepresentation of the representations, agreements and warranties of Tenant set forth herein.

F. Tenant agrees to obtain, participate and comply with the requirements of an annually conducted environmental audit.

Section 15.2 Quiet Enjoyment. Upon payment by Tenant of the Rent and all other sums due hereunder, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the term hereby demised, without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to all of the terms and conditions of this Lease.

ARTICLE 16 MISCELLANEOUS

Section 16.1 Non-Discrimination. Tenant agrees, for itself and its successors and assigns, that it shall not discriminate against any person or group thereof upon the basis of race, color, religion, age, sex, ancestry, disability, or national origin in its use or occupancy of the Leased Premises. A copy of the Landlord's Anti-Discrimination policy is attached to this Lease and is incorporated herein by reference.

Section 16.2 No Gambling Use. No existing building on the Leased Premises, nor any building which is constructed or placed upon the Leased Premises, either temporarily or permanently, shall be used for housing the operation of any multi-game, casino-style gambling on the Leased Premises. Section 16.3 Entire Agreement. This Lease, and the Exhibits and Riders, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises.

Section 16.4 No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant.

Section 16.5 Notices. Any notice pursuant hereto shall be given in writing by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, and shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address. Any such notices may be under the signature of the Landlord's or Tenant's (as the case may be) agent, attorney, or representative.

Tenant's Address: Kansas Humane Society
Attn: Kim Janzen, Executive Director
4218 Southeast Blvd
Wichita, Kansas 67210

Landlord's Address: City of Wichita
Attn: John Philbrick, Property Management Director
13th Floor, City Hall
455 N. Main
Wichita, Kansas 67202

Section 16.6 Captions and Section Numbers The captions, section numbers, article numbers and index appearing in this Lease are inserted only as a matter of convenience.

Section 16.7 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

Section 16.8 Recording. Tenant shall not record this Lease without the written consent of Landlord; however, upon the request of either party hereto, the other party shall join in the execution of a memorandum or so-called "short form" of this Lease for the purposes of recordation. Said memorandum or short form of this Lease shall describe the parties, the Leased Premises, Tenant's right of extension, and the term of this Lease and shall incorporate this Lease by reference.

Section 16.9 Gender. The use of the neuter gender herein shall include the masculine or feminine gender, and the plural shall also include the singular, or vice versa.

16.10. Right of First Refusal.

A. *Grant of Right of First Refusal*. Landlord hereby grants to Tenant an exclusive right of first refusal (sometimes referred to herein as the "Right of First Refusal") to purchase the Leased Premises.

B. *Exercise of Right of First Refusal*. At such time as Landlord desires to sell, transfer or otherwise convey the Leased Premises to any party, Tenant may exercise its Right of First Refusal pursuant to an "Offer" as defined below and, Tenant shall have the right of first refusal with respect to such Offer. An "Offer" for purposes of this Section is defined as a bona fide offer from a third party (the "Transferee") to acquire the Leased Premises or to accept a transfer of the Leased Premises, which Offer is accompanied by an executed written agreement for the transfer (the "Offer Agreement") identifying the Transferee. If Landlord receives and desires to accept an Offer, Landlord shall promptly notify Tenant thereof and provide Tenant a complete and fully legible copy of the Offer Agreement accompanied by Landlord's statement that it is prepared to transfer the Leased Premises to Tenant upon the terms contained in the Offer Agreement (collectively, the "Offer Notice").

Within thirty (30) days of receipt of the Offer Notice, Tenant shall notify Landlord whether Tenant elects to exercise its right to accept the Transfer of the Leased Premises as set forth above. If Tenant notifies Landlord that it does not wish to exercise its right to accept the Transfer of the Leased Premises, Landlord may proceed to close the proposed Transfer. In the event Tenant exercises the Right of First Refusal by delivering written notice thereof (the "Right

CITY OF WICHITA
City Council Meeting
June 21, 2011

TO: Mayor and City Council Members

SUBJECT: Weapons Destruction

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Receive and file the report.

Background: The Police Department has requested authorization to destroy several weapons which have been confiscated in criminal activity but are no longer needed as evidence.

Analysis: The City Code provides that weapons seized in connection with criminal activity shall be destroyed or forfeited to the Wichita Police Department. All transactions involving weapon disposal must have prior approval of the City Manager. A list of weapons being destroyed has been provided (attached), and includes Exhibit A – 77 long guns and 229 handguns. The destruction of the weapons will be witnessed and monitored by staff.

Financial Considerations: There are no financial considerations.

Goal Impact: The destruction of seized weapons furthers the goals of Safe and Secure Neighborhoods by permanently removing these weapons from the streets of Wichita.

Legal Considerations: Upon review by the City Council, the necessary court documents will be prepared to proceed with destruction of the listed weapons.

Recommendations/Actions: It is recommended that the City Council receive and file the list of weapons.

Attachment: List of weapons to be destroyed.

JANUARY/ARPIL 2011 LONG GUN LIST

#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
1	07C036304	MARLIN	GOLDEDN 39A	AC19825	22	RL
2	07C048420	MARLIN	60W	10338304	22	RB
3	07C036507	SEARS & ROEBUCK	JC HIGGINS 20	58353	12	SP
4	07C034151	WINCHESTER	1912	162401	12	SP
5	07C50782	STEVENS	62	0800862	22	RI
6	07C041668	REMINGTON	522VIPER	3244757	22	RI
7	07C041668	BROWNING	20	6Z1905	20	SI
8	07C039048	REMINGTON	870	757545V	12	SP
9	07C045230	BROWNING	BL22	57B62442	22	RL
10	07C050465	WINCHESTER	1300	L2399356	12	SP
11	07C034207	MOSSBERG	500A	P637389	12	SP
12	07C33131	ITHACA	37	5616512	12	SP
13	07C43464	SEARS & ROEBUCK	JC HIGGINS58316		12	SB
14	07C36507	NORINCO	SKS	1601588		RI
15	07C55734	MOSSBERG	500A	L122780	12	SP
16	07C55002	MOSSBERG	CC660	K003099	12	SP
17	07C58735	BROWNING	LIGHT 12	L23647	12	SB
18	07C65479	MOSSBERG	88	MV23463L	12	SP
19	07C66682	WESTERNFIELD	401		12	SP
20	07C63231	MOSSBERG	835	UM465995	12	SP
21	07C55238	WINCHESTER	1300	L3451428	20	SP
22	07C65477	ITHACA	XL900	S1962583	12	SB
23	07C65479	SAVAGE	62	0465793	22	RB
24	07C56033	MOSSBERG	500AB	B76702	12	SP
25	07C63543	WINCHESTER	1200	L1009873	20	SP
26	07C29403	WINCHESTER	120 YOUTH	L1514872	20	SP

#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
27	07C52875	NORINCO	SKS	27027819J	7.62	RI
28	07C37126	REMINGTON	870 EXPRESS MAGNUM	D142126M	12	SP
29	07C60097	SMITH & WESSON	916-A	6B1378	12	SP
30	07C52875	MOSSBERG	88	MV56424G	12	SP
31	07C56033	MOSSBERG	285TA		20	SB
32	07C60097	SAVAGE	420	2800	12	SE
33	07C55577	IVER JOHNSON	CHAMPION	UUXR	410	SS
34	07C51341	NEW ENGLAND FIREARMS	PARDNER SB1	NE320140	20	SS
35	07C52875	CENTURION	M98	PR23431	30-06	RB
36	07C68719	SAVAGE ARMS	STEVENS 62	0144528	22	RI
37	07C53787	SPRINGFIELD ARMORY	M1 grand	742805	30	RI
38	07C60097	NORINCO	SKS	1405981	7.62	RI
39	07C56376	REMINGTON	742	390250	30-06	RB
40	07C71325	SAVAGE ARMS	820B		12	SP
41	07C86276	REMINGTON	870 EXPRESS MAGNUM	A325397M	12	SP
42	07C78405	REMINGTON	870 EXPRESS	W837113M	12	SP
43	07C83493	MOSSBERG	500A	R171079	12	SP
44	07C76733	BRASILEIA DECARTUCHOS	SB	792588	20	SS
45	07C517631	REMINGTON	870	T920542V	12	SP
46	07C73112	WINCHESTER	74	20077A	22	RB
47	07C79201	EGYPTIAN	MIRSA	06521	7.62	RI
48	08C13173	KEYSTONE SPORTING ARMS	DAVEY CRICKETT	235813	22	RB
49	07C82524	MOSSBERG	500CT	G723178	20	SP
50	03C2535	NEW ENGLAND	PARDNER	NS293708	12	SS
51	07C75418	SAVAGE ARMS	940C		20	SS

#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
52	07C95916	CHINESE	SKS	1741694	7.62	RB
53	07C88484	MOSSBERG	835	UM235795	12	SP
54	07C91716	SEARS & ROEBUCK	JC HIGGINS 5831		12	SB
55	07C99887	MOSSBERG	500C	J349196	20	SP
56	07C95916	CHINESE	87	0604314	12	SL
57	07C100765	REMINGTON	7400	8410734	30-06	RI
58	07C91152	MARLIN	60	95437229	22	RI
59	07C31607	OLYMPIC	MFR	TB9120	223	RI
60	07C89693	MOSSBERG	500A	R372133	12	SP
61	07C92824	SAVAGE ARMS	SPRINGFIELD 67F	A575251	20	SP
62	07C92508	REMINGTON	5501		22	RI
63	07C91111	MARLIN	GLENFIELD 60	20338698	22	RI
64	07C95275	RFI	1MK3	80335L		RB
65	07C87546	ARMI SPORT		44554	44	RU
66	07C97952	NEW ENGLAND	PARDNER	275458	410	SS
67	07C94577	NEW ENGLAND	PARDNER SB1	NL231001	20	SS
68	08C4793	MARLIN	60		22	RI
69	08C752	WESTERNFIELD	M550ABR	G805764	12	SP
70	08C3902	REVELATION	325BA		20	SB
71	97C24449	STEVENS	59A		410	SB
72	08C3568	NORINCO	SKS762	7100997	762	RI
73	08C10243	REMINGTON	514		22	RB
74	08C5236	SAVAGE ARMS	85		22	RI
75	08C1413	COAST TO COAST	367H		12	SP
76	08C10584	REMINGTON	510		22	RB

77	08C7279	NORINCO	SKS	1710615	762	RI
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#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
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JANUARY/APRIL 2011 HAND GUN LIST

#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
1	07C042608	LORCIN	L380	335804	380	PI
2	07C050137	S&W	196	E169719CF19	357	PR
3	07C040071	COBRA	FS380	FS022763	380	PI
4	07C050034	RUGER	P94	34145029	40	PI
5	07C041668	S&W	25-5	N657710	45	PR
6	07C039705	COLT	NEW FRONTIER	G168745	22	PR
7	07C044204	HAWES ARMS	WESTERN SIX	506912	22	PR
8	07C033428	S&W	22A	UAT4504	22	PI
9	07C045553	TAURUS	PT111	TZK46250	9	PI
10	07C042841	RAVEN ARMS	P-25	389056	25	PI
11	07C049258	DAVIS	P380	AP226161	380	PI
12	07C039448	GLOCK	GLOCK 26	DTC832US	9	PI
13	07C65477	HECKLER KOCH			9	PI
14	07C16831	COLT	COBRA	A79274	38	PR
15	07C35828	LORCIN	L380	062294	380	PI
16	07C61053	SMITH & WESSON	19-3	K848678	357	PR
17	07C41668	BRYCO ARMS	38	273352	32	PI
18	07C46729	JIMINEZ	JA NINE	037573	9	PI
19	07C48187	RUGER	P90DC	66083368	45	PI
20	07C43379	LORCIN	L25	183694	25	PI
21	07C52883	LORCIN	L380	072254	380	PI
22	07C47600	RUGER	P89DC	30576635	9	PI
23	07C56376	SMITH & WESSON	66	9K71316	357	PR
24	07C55403	SMITH & WESSON	36	J267864	38	PR
25	07C64971	DAVIS INDUSTRIES	P380	AP400004	380	PI

26	09C46412	TAURUS		HA97194	38	PR
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#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
27	07C68506	COLT	ARMY SPECIAL 38	445464	38	PR
28	07C63549	RUGER	SECURITY-SIX	15256685	357	PR
29	07C52875	BRYCO	JENNINGS J-22	310752	22	PI
30	07C57801	SMITH & WESSON	27-2	N393375	357	PR
31	07C62989	ROSSI	38 SPECIAL	AA086957	38	PR
32	07C58427	S&W	15-1	K438965	38	PR
33	07C53170	JP SAUER & SOHN	WESTERN MARSHAL	2103714	44	PR
34	07C51762	ARMINIUS	38	589333	38	PR
35	07C80172	REMINGTON	M1911A1 US ARMY	1721915	45	PI
36	07C76824	S&W	38	KWOB158193	38	PR
37	07C73505	LORCIN	L9MM	002021	9	PI
38	07C72112	RUGER	P89DC	30789736	9	PI
39	07C074057	S&W	SW40E	PBH9174	40	PI
40	07C70158	RAVEN	P25	246960	25	PI
41	07C71269	DAVIS INDUSTRIES	P380	AP453124	380	PI
42	07C86804	RG IND	RG14	L707809	22	PR
43	07C77838	DAVIS INDUSTRIES	D38	D081929	38	PD
44	07C84390	LORCIN	L380	006937	380	PI
45	07C85019	RUGER	SP101	57098668	357	PR
46	07C71269	DAVIS INDUSTRIES	P380	AP186892	380	PI
47	07C80435	ROSSI	M68	AA217252	38	PR
48	07C79863	HI POINT	C9	P1335448	9MM	PI
49	07C80115	STAR	FIRESTAR	2042959	9	PI
50	07C81855	RUGER	P89	30953471	9	PI

51	07C86340	BRYCO ARMS	BRYCO 38	452022	380	PI
52	07C72111	BRYCO	JENNINGS J22	329457	22	PI

#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
53	07C71795	LORCIN	L380	LE1457	380	PI
54	07C81855	BRYCO ARMS	JENNINGS NINE	1495742	9	PI
55	07C85650	RUGER	SINGLE SIX	6400770	22	PR
56	07C75485	SMITH & WESSON	5906	TDJ5044	9	PI
57	07C86340	NORINCO		428751	9	PI
58	07C70666	JENNINGS	J22		22	PI
59	07C80335	BRYCO	BRYCO 59	779951	9	PI
60	07C85838	HI POINT	CF380	P854133	380	PI
61	07C86784	EIG	EIGEI	230715	22	PR
62	07C78655	SMITH & WESSON		522523	38	PR
63	07C84999	IJA & CWKS	IJTARGETSEALED	M44334	22	PR
64	07C73599	BROWNING	BDA380	06509	380	PI
65	07C71634	RUGER	SP101		357	PR
66	07C75952	SMITH & WESSON	36	J790373	38	PR
67	07C71756	PHOENIX ARMS	RAVEN	3003176	25	PI
68	07C76964	FIC			22	PI
69	07C66432	STALLARD ARMS	JS-9MM	018338	9	PI
70	07C58245	ROHM	86	0C9215	22	PR
71	07C69294	AA ARMS	AP9	029725	9	PI
72	07C67842	JENNINGS	BRYCO 59	820070	9	PI
73	07C78187	SMITH & WESSON		345928	38	PR
74	07C55117	HARRINGTON & RICHARDSON		387467	380	PR
75	07C32583	RG	RG14		22	PR
76	07C56622	JENNINGS	J22		22	PI

77	07C52349	HI POINT	CF380	P840753	380	PI
78	07C71849	CALWESTCO	JENNINGS J22	698552	22	PI

#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
79	07C78465	HELMAN	9MM	1125212	9	PI
80	07C69387	BERETTA	21A	BCS20494U	22	PI
81	07C63847	STAR	FIRESTAR	2036815	40	PI
82	07C68516	ARMINIUS	TITAN TIGER	65919	38	PR
83	07C53063	SMITH & WESSON	15-2	K628562	38	PR
84	07C51643	H&R	H&R 922	D2475	22	PR
85	07C69211	CHARTER ARMS	UNDERCOVER	343668	38	PR
86	07C62800	RUGER	P89DC	30979163	9	PI
87	07C64162	RUGER	GP100	17454098	357	PR
88	07C68115	SMITH & WESSON	4006	TFD3030	40	PI
89	07C68375	FIE	E15	91593	22	PR
90	07C60265	BRYCO	JENNINGS NINE	1514838	9	PI
91	07C59311	HI POINT	JCP	X709451	40	PI
92	07C61095	HI POINT	C	P014134	9	PI
93	07C65915	HIGH STANDARD		679156	22	PR
94	07C62305	SMITH & WESSON	14	K374925	38	PR
95	07C62715	PHOENIX ARMS	RAVEN		25	PI
96	07C61983	ROSSI	M68	AA474998	38	PR
97	07C54894	BRYCO	JENNINGS NINE	1464029	9	PI
98	07C53408	HI POINT	C	023686	9	PI
99	07C64370	BRYCO ARMS	JENNINGS NINE	1538077	9	PI
100	07C69109	TAURUS	PT92AFS	TKJ19308AFSD	9	PI
101	07C41668	BERETTA	21A	BES25441U	22	PI
102	07C44204	RUGER	SECURITY SIX	15379906	357	PR

103	07C34868	SMITH & WESSON	10-2	C560247	38	PR
104	07C50573	ROSSI	M88	W023792	38	PR

#	CASE NUMBER	MAKE	MODEL	SERIAL NUMBER	CAL	TYPE
105	07C66999	H&R	THE AMERICAN		32	PR
106	07C46394	IJA& C.WKS	IJ TARGET	M99457	22	PR
107	07C46483	RAVEN	P25	311944	25	PI
108	07C65909	BERETTA	950BS	BER35701T	22	PI
109	07C54471	H&R	THE AMERICAN		32	PR
110	07C51664	NORTH AMERICAN		L073802	22	PD
111	07C53787	RG	RG14	L689785	22	PR
112	07C54233	SMITH & WESSON	36	353498	38	PR
113	07C68113	BRYCO ARMS	JENNINGS J22	132755	22	PI
114	07C64347	NORTH AMERICAN		E060275	32	PD
115	07C34361	STERN-RUGER	BEARCAT	11127	22	PR
116	07C34312	UNKNOWN			38	PR
117	07C63732	CLERKE	1 ST	221076	22	PR
118	07C51488	AMERICAN	BULL DOG		38	PR
119	07C42451	FEG	P9M9HP	YG06513	9	PI
120	07C36261	RUGER	SP101	57011208	38	PR
121	07C35212	LORCIN	L25	076503	25	PI
122	07C49383	HOPKINS & ALLEN ARMS	DOUBLE ACTION NO 6	5437	38	PR
123	07C66896	DAVIS	DM22	105544	22	PD
124	07C46394	FIE	E15	TA94394	22	PR
125	07C50510	JIMENEZ ARMS	JANINE	037124	9	PI
126	07C46259	RUGER	SINGLE SIX	6579693	22	PR
127	07C48061	GLOCK	22	CMK075US	40	PI
128	07C50564	RAVEN	MP25	1827596	25	PI

129	07C48071	FEG	PA63	L004049	9	PI
130	07C36444	JIMENEZ ARMS	JANINE	037657	9	PI
131	07C47816	LORCIN	L380	133846	380	PI
132	07C45230	H&R	949	AT084606	22	PR
133	07C40262	COLT	1911 US ARMY	516109	45	PI
134	07C43542	RUGER	SECURITY SIX	15694545	357	PR
135	07C41753	BRYCO	BRYCO 59	753334	9	PI
136	07C34353	FEG	PJK9HP	B98468	9	PI
137	07C40689	REMINGTON	M1911A1 US ARMY	1508772	45	PI
138	07C34749	RUGER	GP100	17048359	357	PR
139	07C34698	HI POINT	JH	334269	45	PI
140	07C33153	HI POINT	C9	P1327278	9	PI
141	07C42383	MAKAROV		AS4646	9	PI
142	07C48187	RUGER	P91DC	34014186	40	PI
143	07C36385	BRYCO ARMS	JENNINGS NINE	1446482	9	PI
144	07C59450	LORCIN	L380	042283	380	PI
145	07C45376	HI POINT	JC		40	PI
146	07C46974	BRYCO ARMS	JENNINGS J22	1091215	22	PI
147	07C57393	BRYCO	48	621865	380	PI
148	07C49980	RG	RG26	U010300	25	PI
149	07C61908	PHOENIX ARMS	RAVEN		25	PI
150	07C63816	IVER JOHNSON	38		38	PR
151	07C44633	COBRAY ARMS	M11	890053511	9	PI
152	07C67616	BBM			22	PR
153	07C33296	H&R	THE AMERICAN	3135	32	PR
154	07C36270	DAVIS INDUSTRIES	022	243328	22	PD
155	07C35019	RUGER	A100	1432256	22	PI

156	07C39048	FLLIPIETTA		542422	44	PU
157	07C43043	BERETTA	92FS	BER266541Z	9	PI
158	07C94281	INTRATEC	TEC-22	065362	22	PI
159	07C87706	SMITH & WESSON	38	347328	38	PR
160	07C95001	CLERKE	CLERKE 1 ST	251518	22	PR
161	07C92829	RG	RG14	L613135	22	PR
162	07C94384	RUGER	SP101	57362402	357	PR
163	07C91744	LEINAD INC	COBRAY D	K00007495	45	PD
164	07C87728	LORCIN	L25	157547	25	PI
165	07C100082	DAVIS IND	P380		380	PI
166	07C94593	RAVEN ARMS	MP-25	110438	25	PI
167	07C97537	DAVIS IND	P380	AP122425	380	PI
168	07C101031	TAURUS	85	QE77229	38	PR
169	07C94281	SMITH & WESSON	5906	VAF3192	9	PI
170	07C97447	DAVIS IND	P380	AP229869	380	PI
171	07C66621			038478		PI
172	07C101568	LLAMA	MAXI	71040432601	45	PI
173	07C96530	PHOENIX ARMS	HP25A	4278357	25	PI
174	07C97893	FRATELLI TANFOGLIO	TA90	G26577	9	PI
175	07C98441	LLAMA	22	A05600	22	PI
176	07C86937	COLT	POLICE POSITIVE	210477	38	PR
177	07C89791	ARMINIUS	ARM357	S1017	357	PR
178	07C89529	RUGER	REDHAWK	50071711	44	PR
179	07C97887	RAVEN ARMS	MP25	1877133	25	PI
180	07C96627	COBRA ENT	CA380	CP027995	380	PI
181	07C95275	RAVEN ARMS	MP25	1078268	25	PI
182	07C97238	LORCIN	L380	039947	380	PI

183	07C97893	DAEWOO	DP51	09649	9	PI
184	07C98178	IVER JOHNSON	1900		22	PR
185	07C91152	LORCIN	L380	468796	380	PI
186	07C87546	CONNETICUTVALLEY		0043279	45	PU
187	07C93476	REMINGTON	M1911A1USARMY	1430080	45	PI
188	07C95962	TAURUS	85	PB47196	38	PR
189	07C98410	SMITH & WESSON	SW40G	PBH5042	40	PI
190	07C101864	RAVEN ARMS	MP25	1804099	25	PI
191	07C101680	DAVIS IND	P380	AP284512	380	PI
192	07C99478	FIE	D38	F92585	38	PD
193	07C91111	SMITH & WESSON	19-5	AYD0674	357	PR
194	07C88688	NORINCO	213	700379	9	PI
195	07C96291	NORINCO		P07447	9	PI
196	07C94384	BROWNING	BUCKMARK	515NP05915	22	PI
197	07C101630	RAVEN ARMS	P25	215568	25	PI
198	07C92346	CLERKE	CLERKE 1 ST	158696	32	PR
199	07C89937	SIG SAUER	P220	G276781	45	PI
200	09C20908	SMITH & WESSON	60	ABH8387	38	PR
201	00C124304	LORCIN	L380	545896	38	PI
202	08C16230	GLOCK	G22	KSN873	40	PI
203	08C6525	BRYCO	JENNINGS T380	1465799	380	PI
204	08C3785	RG	RG 14		22	PR
205	08C6424	BRYCO	JENNINGS NINE	1585642	9	PI
206	08C12874	SMITH & WESSON	38	V231273	38	PR
207	08C3410	LORCIN	L380	104840	380	PI
208	08C3847	CHARTER ARMS	BULLDOG	308507	44	PR
209	08C713	EUSTA		4419	22	PR

210	08C1242	BROWNING ARMS			9	PI
211	08C5947	LORCIN	L380	273483	380	PI
212	08C2800	EAA	WITNESS	EA23561	40	PI
213	08C6283	RAVEN ARMS	P25	405378	25	PI
214	08C11256	RG	RG31	Q175009	38	PR
215	08C16886	SMITH & WESSON	686	AHY4867	357	PR
216	08C12214	CHARTER ARMS	OFF DUTY	1098737	38	PR
217	08C7563	IVER JOHNSON			38	PR
218	08C2800	HI STANDARD	R101	930198	22	PR
219	08C5418	TAURUS	PT111	TVJ81721	9	PI
220	08C2826	GLOCK	22	ASC741US	40	PI
221	08C3523	BRYCO	JENNINGS NINE	1506642	9	PI
222	08C13861	GLOCK	17	ASK701US	9	PI
223	08C2380	HI POINT	JHP	X458762	45	PI
224	08C11537	FIE	E22		22	PI
225	08C16289	NORINCO	213	311668	9	PI
226	08C3446	IVER JOHNSON CADET	55SA	B6261	32	PR
227	08C1242	LORCIN	L380	234517	380	PI
228	08C14008	FIE			22	PR
229	08C15718	HI POINT	C9	P114009	9	PI

City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: 2011 Bulletproof Vest Partnership Grant

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Approve application for the Department of Justice Bulletproof Vest Partnership grant application.

Background: The Wichita Police Department has been participating in a Department of Justice grant program designated as the Bulletproof Vest Partnership (BVP) since 2001. Staff have recently been notified that the grant program is once again available for 2011 with an application deadline of July 11. The BVP grant provides funds for law enforcement agencies to purchase bulletproof vests, in an effort to reduce injury and death to law enforcement officers.

Analysis: National Institute of Justice approved vests purchased by the Police Department will be eligible for reimbursement of up to 50% of each vest's total cost, up to a limit set by the amount of grant funding received. Grant award amounts will not be known until such time an award is made. The grant funding will be used to offset a portion of the cost that the City incurs to purchase protective bulletproof vests for police officers. This grant is not subject to rules regarding subplanting of funds. Grant application is completed utilizing an online electronic template provided by the Department of Justice.

Financial Consideration: This funding will help the Wichita Police Department make efficient use of limited financial resources. There is no match requirement.

Goal Impact: The funding will allow the Police Department to offset a portion of the cost that the City incurs to purchase protective bulletproof vests and provide a Safe and Secure Community.

Legal Consideration: The grant application has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the grant application and authorize the necessary signatures.

City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council
SUBJECT: Major Bus Engine Replacement (All Districts)
INITIATED BY: Wichita Transit
AGENDA: Consent

Recommendation: Approve new engine replacement purchase.

Background: Transit bus #2202, a 35' Gillig Phantom, had a major engine failure that caused extensive damage to the engine's block. The engine is beyond repair and needs replacement in order to continue running bus #2202.

Analysis: The vehicle is nine years old and is still within its 12-year useful life requirement before it can become eligible for replacement under Federal Transit Administration (FTA) guidelines. Maintenance staff reviewed the damage with an engine manufacturer and received the following options for repair:

1. Rebuild the existing engine by using a short block replacement reusing all other engine components. Based on no additional damage being found, this option would cost \$17,881 with a one-year warranty on all new parts (no warranty on reused parts). The price may increase for this option pending internal review of engine damage.

or

2. Replace the engine with a complete new engine. This option would provide a one-year warranty on all engine components and allow the City of Wichita to extend the service life of the bus three additional years (from the normal 12 years to 15 years). This option would cost \$39,081.

Wichita Transit recommends replacing the engine (option 2) as this option will extend the vehicle's useful life an additional three years, extending the time in which a replacement will need to be purchased.

Detroit Diesel is the only engine model manufacturer that can be used for this repair. The only regional certified dealership for Detroit Diesel in Kansas is Central Power Systems and Services. Bidding the engine work out to other Detroit Diesel suppliers (outside Kansas) would be cost prohibitive. Transport costs incurred to get the bus back and forth from a remote supplier would be added into the bid. Wichita Transit considers this a sole source of supply procurement.

Financial Consideration: The replacement is considered a major bus improvement, eligible for capital repair funding under an existing grant with FTA that has an 80% federal and 20% local match ratio. The cost for option 2 is \$39,081 (with a 20% local match of \$7,816).

Goal Impact: Replacement and upgrading this equipment meets the City's goal of Ensuring Efficient Infrastructure by maintaining and optimizing public facilities and assets.

Legal Consideration: This request complies with City Ordinance 2.64.020(b) Sole Source of Supply procurement.

Recommendation/Actions: It is recommended that the City Council approve the new engine replacement purchase from Central Power Systems and Services with a cost of \$39,081 as identified in option 2 above.

Attachments: None.

City of Wichita
City Council Meeting
June 21, 2011

TO: Mayor and City Council

SUBJECT: Notice of Intent to Use Debt Financing
Radar Relocation Study - Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: The Airport Authority relies on the City of Wichita for the issuance of General Obligation bonds and/or notes for capital projects. In order to use debt financing for a project, it is necessary to declare that a public necessity exists for, and that the public safety, service, and welfare will be advanced by, the authorization of certain capital improvements to the Mid-Continent Airport facility. Additionally, the nature of said improvements, the estimated costs thereof, and the manner of payment, needs to be disclosed. The actual issuance of the bonds/notes will require a separate authorization from the City Council. Debt financing can be in the form of temporary notes for durations as short as six months for timing considerations, or in the form of General Obligation bonds for long term financing.

Analysis: On June 7, 2011, the City Council, sitting as the Wichita Airport Authority, authorized a contract with the Federal Aviation Administration (FAA) to conduct a study to determine relocation options for the FAA radar equipment that prevents a portion of Mid-Continent from being developed. It is appropriate to make notice of the intent to use debt financing for this project, with the specific financing amount and length being identified when the actual issuance of the bonds/notes are authorized in the future by the City Council.

Financial Considerations: The project budget approved was \$450,000, which represents the maximum cost that will be financed with General Obligation bonds/notes. If debt is issued, the source of repayment for the bonds/notes will be Airport revenues.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is leveraged through the use of financing for capital projects.

Legal Considerations: The Law Department has approved the Authorizing Resolution as to form.

Recommendation/Action: It is recommended that the City Council adopt the Resolution and authorize the necessary signatures.

Attachments: Authorizing Resolution.

(Published in the Wichita Eagle on June 24 and July 1, 2011.)

RESOLUTION NO. 11-150

A RESOLUTION DECLARING THAT A PUBLIC NECESSITY EXISTS FOR, AND THAT THE PUBLIC SAFETY, SERVICE AND WELFARE WILL BE ADVANCED BY, THE AUTHORIZATION OF LAND ACQUISITION AND/OR CERTAIN CAPITAL IMPROVEMENTS TO THE WICHITA MID-CONTINENT AIRPORT FACILITY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport; and,

WHEREAS, K.S.A. 13-1348a provides that a city having an airport authority established pursuant to K.S.A. 3-162 is authorized to issue general obligation bonds for the purpose of purchasing land for airport purchases or for the construction, enlargement, reconstruction, repair or addition to or of any improvements to any such lands.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of land acquisition and/or certain capital improvements, specifically,

Radar Relocation

to the Wichita Mid-Continent Airport facility operated by the Wichita Airport Authority of the City of Wichita, Kansas (such land acquisition and/or improvement to be referred to herein as the "Project").

SECTION 2. That the cost of the above described Project is estimated to be Four Hundred and Fifty Thousand Dollars (\$450,000), exclusive of the cost of interest on borrowed money, and is to be paid by the Wichita Airport Authority of the City of Wichita. Said Wichita Airport Authority cost shall be financed through the issuance of general obligation bonds under the authority of K.S.A. 13-1348a, as amended by Charter Ordinance No. 78 of the City of Wichita, Kansas. The maximum principal amount of bonds issued for this Project shall not exceed \$450,000.

SECTION 3. That to the extent the Project is a capital improvement, the above described Project shall be made in accordance with the Plans and Specifications prepared under the direction of the Airport Engineering and Planning Manager and approved by the Wichita Airport Authority. Said plans and specifications are to be placed on file in the office of the Airport Engineering and Planning Manager located at Wichita Mid-Continent Airport.

SECTION 4. That the City Clerk shall make proper publication of this resolution, which shall be published once each week for two consecutive weeks in the official City paper and which shall be effective from and after said publication.

ADOPTED at Wichita, Kansas, June 21, 2011.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY REBENSTORF, DIRECTOR OF LAW

Second Reading Ordinances for June 21, 2011 (first read on June 14, 2011)

ZON2011-00008 – City zone change from SF-5 Single-Family Residential (“SF-5”) to TF-3 Two-Family Residential (“TF-3”); generally located at the southeast corner of the intersection of Kessler Street and University Avenue (District IV)

ORDINANCE NO. 49-021

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

City of Wichita
City Council Meeting
June 21, 2011

To: Mayor and City Council

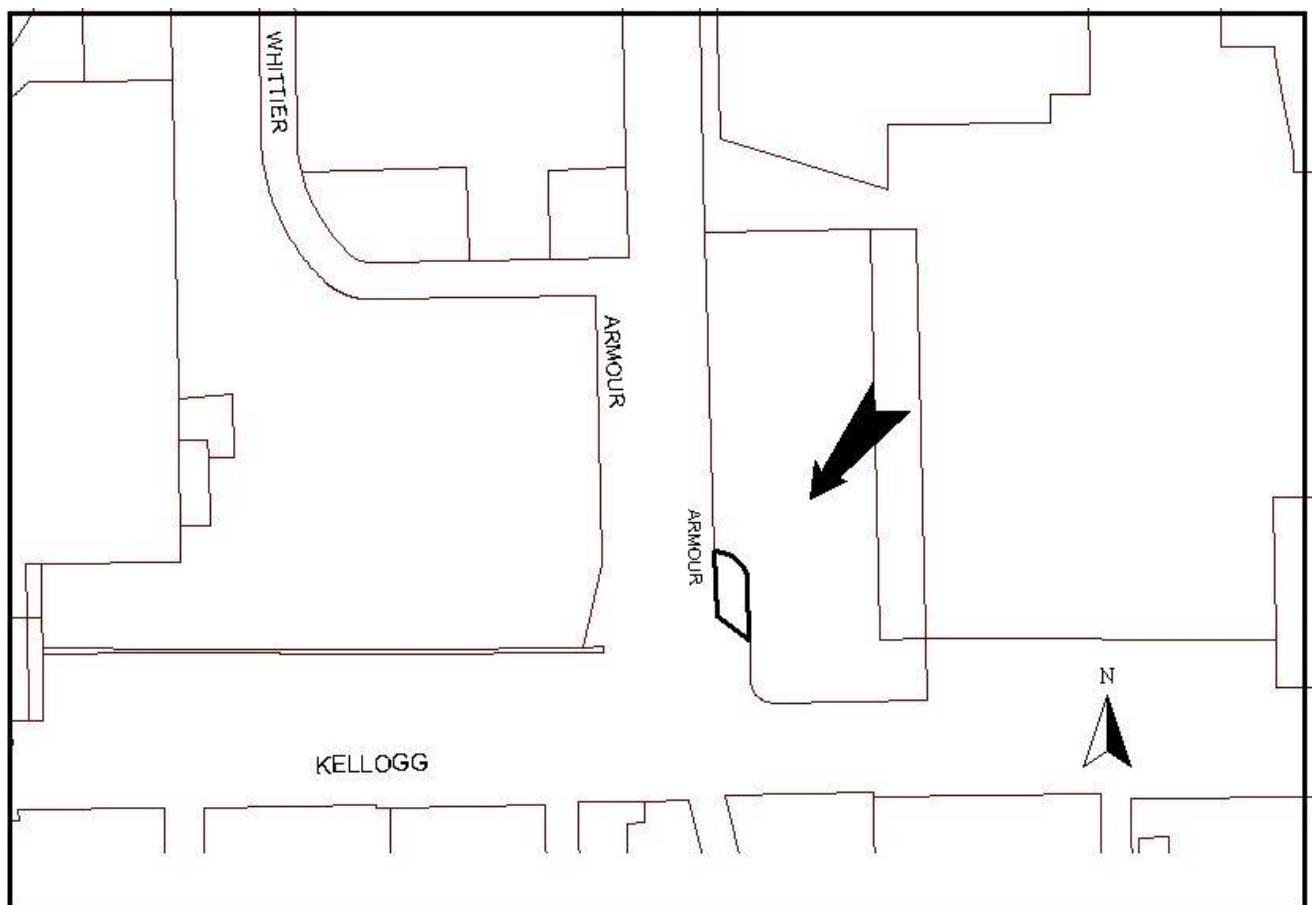
Subject: VAC2011-00014 - Request to vacate a portion of platted street right-of-way; generally located on the northeast corner of Kellogg Street and Armour Drive. (District II)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommended approval of the vacation request.



Background: The applicant is requesting the vacation of an approximately 65-foot wide portion of the platted Armour Drive (now known as Town East Mall Drive) street right-of-way, located along the south approximately 165 feet of the west lot line of Lot 2, Rockwood South Third Addition. This portion of the platted Armour Drive was dedicated on the Rockwood South Third Addition. The requested vacation area appears to be a remnant, the result of recent improvements to Kellogg Street/US 54. The City has determined that the described platted right-of-way is surplus, and its vacation will not compromise the current and future configuration of Kellogg/US 54 and Armour Drive or interfere with current traffic patterns. There are utilities located within the described portion of right-of-way. The Rockwood South Third Addition was recorded with the Sedgwick County Register of Deeds on October 19, 1966.

Analysis: The MAPC voted (10-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Goal Impact: The application supports the City's goal to Ensure Efficient Infrastructure.

Legal Considerations: A certified copy of the Vacation Order, four dedications by separate instruments of temporary utility easements, a partial dedication by separate instrument of abutter's access rights, a drive approach closure, and a restrictive covenant, will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission, to approve the Vacation Order and authorize the necessary signatures.

Attachments: Four dedications by separate instruments of temporary utility easements, a partial dedication by separate instrument of abutter's access rights, a drive approach closure, and a restrictive covenant.

**City of Wichita
City Council Meeting
June 21, 2011**

TO: Wichita Housing Authority Board Members

SUBJECT: Veterans Affairs Supportive Housing Grant Application

INITIATED BY: Housing and Community Services Department

AGENDA: Wichita Housing Authority (Consent)

Recommendation: Authorize submission of an application for 25 Housing Choice Vouchers for rental assistance for homeless veterans, and authorize the necessary signatures.

Background: On June 10, 2011 the United States Department of Housing and Urban Development (HUD) sent a letter to the Wichita Housing Authority (WHA) to determine interest in applying for 25 Housing Choice Vouchers to assist homeless veterans under the HUD-Veterans Affairs Supportive Housing (VASH) program. This program will operate in partnership with the Wichita Veterans Administration Medical Center.

Analysis: The 2009 Omnibus Appropriations Act provided \$75 million to fund the HUD-Veterans Affairs Supportive Housing (VASH) program. The WHA will be responsible for administering the rental assistance, while the Veterans Administration (VA) will provide case management, health and other supportive services. The Wichita Veterans Administration Medical Center will refer eligible HUD-VASH families to the Wichita Housing Authority. HUD-VASH voucher participants must comply with VA case management requirements to remain eligible for the program.

The WHA currently manages a HUD-VASH program with 85 vouchers. The new vouchers will result in additional veterans who can be helped with housing assistance in our community.

Financial Considerations: This application will seek federal funds, and will not impact the City General Fund.

Goal Impact: The HUD-VASH program impacts the Economic Vitality and Affordable Living goal.

Legal Considerations: The funding application has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Housing Authority Board authorize submission of an application for 25 Housing Choice Vouchers for rental assistance for homeless veterans, and authorize the necessary signatures.

Attachment: Funding Application.

Funding Application

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp.04/30/2014)

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

Send the original and two copies of this application form and attachments to the local HUD Field Office

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Wichita Housing Authority
332 N. Riverview
Wichita, KS 67203

Do you have an ACC with HUD No Yes

Date of Application

Legal Area of Operation

(area in which the HA has authority under State and local law to administer the program)

for Section 8 Certificates?



06/21/2011

Wichita, KS

for Section 8 Vouchers?



A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)

County

Congressional
District

Units

B. Proposed Assisted Dwelling Units.

(Complete this section based on the unit sizes of the applicants at the top of the waiting list.)

	0-BR	1-BR	Number of Dwelling 2-BR	Units 3-BR	Size 4-BR	5-BR	6+BR	Total Dwelling Units
Certificates								
Vouchers	5	12	5	3				25

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	\$	\$	\$	\$	\$	\$	\$
Vouchers	\$	\$	\$	\$	\$	\$	\$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages)

E. Housing Quality Standards (HQS). (Check applicable box) HUD's HQS will be used with no modifications Attached for

HUD approval are HQS acceptability criteria variations

F. New HA Information. Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. Certifications. The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

Equal Opportunity Certification

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to an y employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c) , (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative

Print or Type Name of Signatory

Mary K. Vaughn

Phone No.

Date

(316) 462-3795

06/21/2011